CONGRESSIONAL DIGEST

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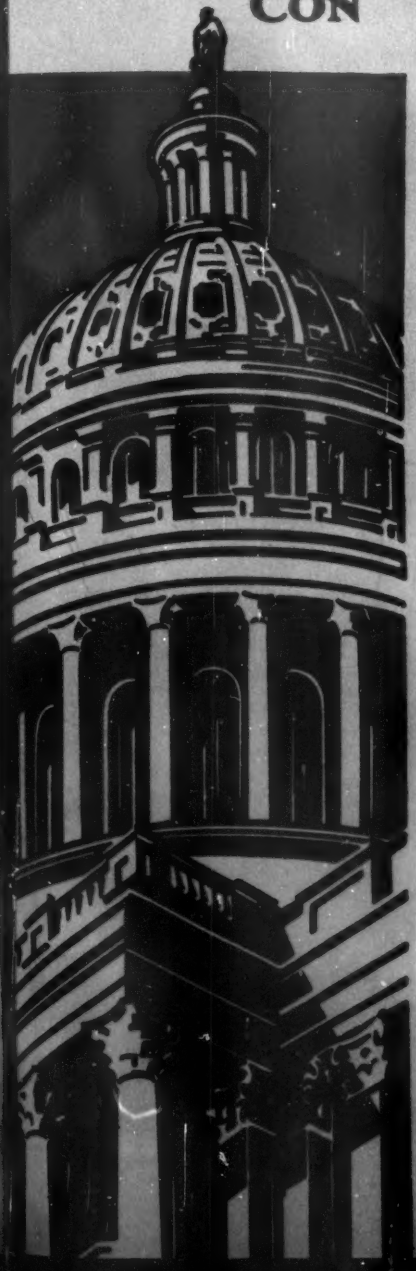

June-July, 1935

Should Lynching be Made a Federal Crime?

Analysis of Present State Laws

Lynchings in the U. S. Since 1882

Former Efforts for a Federal Law

The Pending Costigan-Wagner Bill —Should It be Passed by Congress?

Pro and Con Discussion by Senators, Educators, Sociologists and Others

Congress Presses Toward Adjournment

WASHINGTON, D.C.

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THE CONGRESSIONAL DIGEST

The Pro and Con Monthly

Not an Official Organ, Not Controlled by Nor Under the Influence of Any Party, Interest, Class or Sect

N. T. N. ROBINSON
Editor and Publisher

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Founder

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The
CONGRESSIONAL
DIGEST

June-July
1935

Vol. 14
Nos. 6-7

Congress Presses Toward Adjournment

A Summing Up of Major Action

by N. T. N. Robinson

FOLLOWING its temporary disposition of the soldier bonus problem, Congress, as the month of May draws to a close, is girding its loins for a mighty effort to clean up its job and adjourn by July 4.

Tired of the legislative grind and the pressure of all manner of lobbyists, the members of both houses are eager to call it all off and quit for a six months' rest.

No less anxious for an early adjournment are the President and his official family, all of whom are anxious to get started on further moves toward "reform and recovery."

A check up on May 23 shows, however, that, from the Administration standpoint, much has to be done before the Administration can call this session of Congress a success.

The Administration Program

Early in the session the President let it be known that there were six pieces of legislation that, in his opinion, should be marked "must" in the minds of the Democratic leaders on Capitol Hill. They were:

1. The $4,800,000,000 Works Relief Bill.
2. Extension of the National Industrial Recovery Act, which automatically expires on June 16 of this year.
3. The Social Security Bill, covering unemployment insurance, old-age pensions, pensions for the blind and maternity and child aid.
4. The Public Utility Holding Company Bill.
5. The Banking Reform Bill.
6. The Railroad Bill.

There were a number of other matters the President wanted Congress to attend to, but those listed above were the ones he insisted upon.

But One Administration Bill Passed

And yet, nearly five months after Congress convened for the present session, but one of those "must" measures had been passed—the $4,800,000,000 Works Relief Bill—and but two of them had passed the House—the Social Security Bill and the Banking Bill.

The Senate passed a resolution to extend NRA but it was quite contrary to the sort of extension desired by the President. The House is yet to act on NRA.

The Senate has before it, reported from the Committee on Finance, the Social Security Bill, which brings this measure nearer to passage than any of the others on the President's program, since the House has already passed it.

The Banking Bill is in the hands of a subcommittee of the Senate Committee on Banking and Currency, where Senator Carter Glass, Virginia, Democrat, is opposing it bitterly.

The Public Utility Holding Company Bill has been reported from the Senate Committee on Interstate Commerce, but an identical bill is still under consideration by the House Committee on Interstate and Foreign Commerce.

The Railroad Bill is also before the House Committee on Interstate and Foreign Commerce.

To put this entire program through in something like five weeks will require some fast work.

Compromises Likely

If Congress is to adjourn early in July, the President will either have to agree to the dropping of some of his pet legislation or to a compromise on some of it.

So far there is no inkling that any deals have been suggested, but Presidents, Senators and leading members of the House are past masters at working out subtle deals when they want to and if both sides are anxious for an early adjournment, they will find a way to bring one about, with everybody's face saved.

One spell of hot weather in June (it has been an unusually cool spring in Washington) will bring some swift moves at the White House and on Capitol Hill. It is, therefore, difficult to make predictions as to the ultimate fate of the President's program.

Patronage and Relief Money

On the side of the Administration is the power of patronage and the power of relief money. Against the Administration are the convictions of a number of Senators who are determined to put up stubborn opposition to some of the Administration measures.

With the exception of the soldier bonus bill, it has been conceded from the first that the President could do pretty much what he pleased with the House. His power over the Senate is by no means certain.

So far the only test in the Senate was on the resolution to continue NRA. In spite of the pleas of Donald Richberg, who succeeded General Hugh Johnson as head of that agency, the Senate Committee on Finance refused to report a two-year extension and instead recommended a nine-month extension and the Senate promptly approved its recommendation.

The assembling of 40 votes in the Senate to sustain the President's veto of the Bonus Bill was not due entirely to Presidential pressure, but partly to the feeling of many of the 40 Senators against currency inflation.

The President's Power to Be Tested

Not until the Social Security, Holding Company and Banking Bills come to a showdown vote will the question of the President's control of a majority of the votes in the Senate be settled.

So far the Senate has been rather successful in putting the brakes on the Administration program. By various methods they have retarded its progress to the point where Congress will either have to remain in session well into the summer, agree to pass the White House program promptly or force the President to compromise.

If the President decides he would prefer to compromise on certain items on his program than have Congress in Washington during July, deals will be made. Otherwise the fight will go to a finish in the Senate.

In the meantime Congress has been busy with a mass of routine legislation and some legislation of considerable importance.

Most of the big annual appropriation bills have been passed on schedule time.

The big fight of the year was, naturally, on the Bonus Bill although the Works Relief Bill had to pass through stubborn resistance in the Senate before it was finally voted on.

Following is a listing of the important major legislation with its status as of May 23:

The Soldier Bonus Veto

On March 22 the House, by a vote of 54 to 40, passed the Patman soldier bonus bill, which was substituted on the floor for the Vinson bill, reported by the Committee on Ways and Means. The Senate, on May 7, also passed the Patman bill.

On May 22 President Roosevelt appeared before the House and Senate and read his message vetoing the bill. Forty-five minutes later the House overrode the President's veto by a vote of 322 to 98.

On May 23, after several hours' debate, the Senate sustained the veto by a vote of 54 to 40.

The Patman bill provided for the immediate payment of veterans' adjusted service certificates in cash newly issued greenbacks amounting to $2,200,000,000.

The action of the Senate settles the Patman bill so far as this session is concerned, but immediately following the sustaining of the veto, bonus advocates began working on plans for a compromise measure.

Bills Passed by Both Houses and Signed by the President

Works Relief—Appropriation of $4,880,000,000 with wide discretion given the President for its expenditure. Administration bill.

Treasury Bond Issues—Authorizing the Secretary of the Treasury to borrow up to $45,000,000,000 and providing for the sale of "baby bonds" to the public through the postal system. Administration bill.

Reconstruction Finance Corporation—Extension of the life of RFC, which was created in 1930 for two years, with broadened powers. Administration bill.

Farm Seed Loans—Authorization of Federal loans to farmers in the sum of $60,000,000 for the purchase of seed and feed for livestock. Not an Administration bill.

Soil Conservation—Creation of a permanent soil conservation bureau in the Department of Agriculture to establish soil erosion control projects, etc. Administration bill.

Income Tax Publicity—Repeal of tax law provisions requiring publicity of income tax returns, known as "pink slip" bill. Not an Administration measure.

Oil Conservation—An act to curb illegal production of oil, known as "hot oil" act, designed to remedy defects in a section of the National Industrial Recovery Act which the Supreme Court declared unconstitutional. Administration bill.

Coast Defense—Authorization to Navy Department to spend $38,000,000 on defenses on Pacific Coast, in Pacific insular possessions and Panama Canal Zone.

Telephone Investigation—Authorization to Federal Communications Commission to spend $750,000 for an investigation of interstate telephone communication.

Home Owners Loan Corporation—Making an additional appropriation of $1,750,000,000 to be loaned to home owners, bringing HOLC allotments up to a total of $4,750,000,000.

Appropriations—Passage of six of the ten annual departmental supply bills.

Bills Passed by the Senate

Extension of NRA

On May 14 the Senate passed S. J. Res. 113, the resolution reported from the Committee on Finance on May 2, to continue the National Recovery Administration until April 1, 1936. Upon reaching the House the resolution was referred to the Committee on Ways and Means, which will hold it until the soldier bonus question is disposed of. The House committee is expected to either amend the Senate resolution to provide for the extension of NRA to June 16, 1937, two years from the date it is due to expire, or to report a substitute resolution of its own to that effect, in line with the expressed wishes of the President.

If the House passes a two-year extension bill, the differences between the Senate and House will be fought out in conference.

The indications are that some sort of compromise will be reached and that NRA will be extended for, perhaps, fifteen or eighteen months.

If the bill creating NRA is allowed to die on June 16, special legislation will be required to take care of matters involving public works, since the authority for this is contained in the National Industrial Recovery Act.

In its report on the continuing resolution the Senate committee said:

"As its title indicates, the resolution extends until April 1, 1936, the provisions of title I of the National Industrial Recovery Act. However, two substantial amendatory provisions are included in the resolution, to apply during the period thus extended: (1) It is provided that no price fixing shall be permitted or sanctioned under the provisions of any code, except that provisions for the regulation of prices under governmental control may be included in codes for those mineral natural resource industries in which prices are now fixed pursuant to the provisions of any code and which the President finds to be so affected with a public interest that such regulation is necessary and proper in the public interest; and (2) no code of fair competition shall be applicable to any person whose business is wholly intrastate.

"The resolution further provides that the President shall review or cause to be reviewed for compliance with the resolution, codes in effect on the date the resolution takes effect. To afford reasonable opportunity for such review, such codes are continued in effect (subject, of course, to cancelation or modification pursuant to the provisions of the resolution) for a period of 30 days after June 15, 1935, unless they are previously reviewed and suspended. It is specifically provided that no such code shall continue in effect after the expiration of such 30-day period unless the President has reviewed the code and approved it and finds that the code so approved conforms to the requirements of the resolution.

"The committee feels that it should state that the extension of title I of the National Industrial Recovery Act, as above described, is not to be construed as an approval or disapproval of any interpretations heretofore made of any of the provisions of such title by any officers of the Federal Government; and, accordingly, nothing in the resolution is to be construed to approve or validate any provision of a code or any action not authorized by title I of the National Industrial Recovery Act or the resolution."

The plan advocated by the President is for a two-year extension of the Act; a period of three to six months for revision of existing codes; a new outline of legislative policies to meet the Supreme Court's objection to the lack of legislative standards in the present Act; limiting provisions of the Act specifically to those concerns engaged in intrastate business; the establishment of voluntary codes, but with the Government reserving the right to fix minimum wages and maximum hours, to require collective bargaining and to prohibit child labor; the adoption of standards to prevent monopolies and unfair competition and the revision of the method of code enforcement.

TVA—Amendments to the TVA Act broadening the powers of the Tennessee Valley Authority and bringing the Cumberland River territory under TVA. Passed by the Senate on May 14 and referred to the House Committee on Military Affairs. Vigorous opposition to the amendments and to the operations of TVA in general during committee hearings. An Administration measure which will probably be passed.

Motor Bus Bill—Gives Interstate Commerce Commission the right to regulate bus and motor traffic in interstate commerce. Passed Senate April 16. Referred to House Committee on Interstate and Foreign Commerce. Will be considered by committee after holding company bill is disposed of. Administration measure.

Labor Disputes Bill—The Wagner-Lewis bill to create a Labor Disputes Board, to provide for collective bargaining and to outlaw company unions. Designed to remedy defects in "Section 7-a" of the National Industrial Recovery Act.

On May 16 the Senate, by a vote of 63 to 12, passed the Wagner bill, after defeating, by a vote of 50 to 21, an amendment offered by Senator Tydings, Maryland Democrat, to forbid coercion of employees from any source. The Tydings amendment was designed to prevent the "flying squadorn" system of spreading strikes.

The speed with which the Wagner bill went through the Senate caused surprise. Senator Wagner had appealed to the Democratic leaders in the Senate to allow his bill to be taken up. All he wanted was a vote on it. If a long-drawn-out debate was indicated, he would be willing to have it displaced. The bill came to a vote promptly. When Senators who were inclined to oppose the bill heard the count on the Tydings amendment, they were convinced that opposition was futile and stood aside.

It is expected that the bill will be promptly reported by the House Committee on Labor with probably one important amendment. The Senate bill provides that the Labor Disputes Board shall be an independent, judicial tribunal. Miss Perkins, Secretary of Labor, insists that the Board should be part of the Department of Labor.

It is reported that President Roosevelt will support Miss Perkins as against Senator Wagner and that the House committee will report the bill amended to meet Miss Perkins' wishes.

If the House passes the bill thus amended, it is likely that Senator Wagner will accept the amendment. As the DIGEST goes to press the bill is in the House Committee on Labor to be considered as soon as the President's veto of the bonus bill is acted upon.

The Wagner-Lewis bill is not an Administration measure but its passage was aided by the uncertainty over the fate of efforts to extend NRA. Since it takes care

of the controversy over Section 7-a, no matter what happens to NRA. (*See* CONGRESSIONAL DIGEST *for* April, *1935.*)

Bills Passed by the House

War Profits—The McSwain, HR 5529, bill to take the profit out of war, was passed by the House on April 9, and reported to the Senate by the Special Committee to Investigate the Munitions Industry on May 2, amended. As reported to the Senate the bill employs the following devices to prevent war profiteering:

(1) Severe income and excess profits taxes.

(2) A draft of industrial management.

(3) A Commodity Control Commission with power to close exchanges, fix prices of commodities, commandeer the whole product of commodity producers and allocate them to industry.

(4) A Finance Control Commission with power to limit or regulate new financing and a revolving fund to aid in the financing by the Government of essential war industries.

(5) A grant of power to the President to fix prices, profits, wages, and other rewards of essential war industry and to establish priorities for the purchase of essential products, to license industry essential to the war effort, and to requisition any product or industry necessary to the carrying on of the war.

Rivers and Harbors Improvement—On April 9 the House passed the Mansfield bill, H.R. authorizing the expenditure of $272,000,000 for 204 river and harbor projects. Not an Administration bill.

Cotton Control—On March 19 the House passed the Doxey bill, HR 6424, providing an exemption of three bales of cotton to each producer from taxation under the Cotton Control Act.

Air Mail—On March 9 the House passed HR 6511, the Mead bill amending the air mail laws.

Banking—On May 9 the House passed the Steagall Banking Bill amending the Federal Reserve Act and making other changes in the general banking structure. On May 22 the bill was still in the hands of a subcommittee of the Senate Committee on Banking and Currency. It is expected that the bill will reach the floor of the Senate before June 1, somewhat amended and will be the topic of bitter debate. This is one of the most important of the Administration measures.

Social Security—On April 19 the House passed the Social Security Bill and on May 17 it was reported by the Senate Committee on Finance with amendments. The bill, as reported by the Senate committee, provides:

1—Compulsory unemployment insurance plans set up by the states, subject to Federal approval, the funds derived from a payroll tax beginning at 1 per cent in 1936 and increasing to 3 per cent in 1938.

2—Old-age benefits to the needy, 65 years of age and over, the Federal Government contributing $15 a month to be matched by an equal amount from each state. The sum of $49,500,000 is appropriated for the Federal Government's share of the old-age benefit payments during the first year.

3—A national system of contributory old-age pensions, the funds to be raised by a graduated tax, from 2 to 6 per cent, divided between employers and employees, beginning in 1937.

4—Federal contribution of $30,000,000 a year for maternal and child aid to states with plans acceptable to the Federal Government.

5—Pensions up to $30 a month to blind persons, regardless of age, on the same basis as old-age pensions.

6—The Treasury Department authorized to sell voluntary annuities of from $60 to $1,200 a year.

The Senate committee adopted an amendment offered by Senator LaFollette, Wisconsin, Progressive, permitting states to set up either the "state pool" system for paying unemployment benefits, under which all contributions from employers go into a common fund, or the "Wisconsin plan" which sets up an individual fund for each employer and his employees.

Shortly before the bill was reported to the Senate President Roosevelt sent to Congress the study of the bill made by the President's Business Advisory Council, composed of fifty industrial leaders. While approving the general purposes of the bill, the Council recommended that various sections of the bill should be enacted separately; that employees should bear part of the cost of unemployment insurance; that industries with greater stability of employment should pay a proportionately smaller part of the cost.

On May 15 Senator George, Georgia, Democrat, introduced a substitute bill for the Administration bill. The George bill provides for a single standard of benefits to be provided by all industries; gives industries and states greater freedom of action than they have under the Administration bill; permits industries and groups to operate their own plans, provided they are actuarily sound; permits employers and employees to receive the benefits of savings they may accomplish through efficient management; requires each industry to pay only the actual cost of its protection program, instead of a flat payroll tax and eliminates a large Federal administration force. (*See* CONGRESSIONAL DIGEST *for February and March, 1935.*)

Bills Pending But Not Passed by Either House

The Holding Company Bill—On May 14 the Senate Committee on Interstate Commerce reported the Wheeler bill for the abolition of public utility holding companies and for the regulation of the transmission and sale of electric energy in interstate commerce. The House Committee on Interstate and Foreign Commerce was still working on the Rayburn bill, practically identical to the Wheeler bill, as originally introduced.

The Senate committee rewrote the original Wheeler bill, S. 1725, and reintroduced it as S. 2796.

This bill will be the subject of sharp controversy in both the Senate and the House. It is an Administration bill and the President is expected to exert great pressure to bring about its passage. (*See* CONGRESSIONAL DIGEST *for May, 1935.*)

★ THE PRO AND CON FEATURE ★

Congress Considers the Costigan-Wagner Anti-Lynching Bill

Introduction to Subject with Study Outline

BETWEEN April 24 and May 1 the Senate was the scene of the first real filibuster of the current session, when Democratic Senators from Southern states rallied their forces in opposition to the consideration of S. 24, the Costigan-Wagner anti-lynching bill.

On April 24 Senator Edward P. Costigan, Democrat, of Colorado, moved to consider the bill introduced jointly by himself and Senator Robert F. Wagner, Democrat, of New York, which had been reported by the Committee on the Judiciary on March 18 and placed on the Senate calendar. Senator Costigan's motion was agreed to.

The Filibuster Begins

Following Senator Costigan's opening speech on the bill, Senator Tom Connally, Texas Democrat, got the floor and the filibuster was on.

From time to time opponents of the bill sought to force an adjournment of the Senate since, once the Senate was adjourned, Senator Costigan's motion to consider the bill would die and would have to be made over again the next day. These efforts were defeated, however, and the Senate continued to recess from day to day, thus maintaining a continued legislative day.

Following Senator Connally, other Southern Democrats made long speeches against the bill, yielding the floor to each other in prearranged order, to stave off a vote.

Pressure for the Bonus Bill

In the meantime supporters of the soldier bonus bill were clamoring for consideration of that measure and finally, following a motion against the anti-lynching bill by Senator William E. Borah, Idaho, Republican, on May 1, the Senate reversed its former votes on motions to adjourn, and adopted a motion to adjourn, made by Senator Joseph T. Robinson, Arkansas Democrat, the majority leader, by a vote of 48 to 32.

Whereupon the Senate, at 3.16 p. m. on May 1 adjourned to meet at 3.30 p. m. on May 1, ending a "legislative day" which had begun at noon on April 15.

From 3.30 to 4.35 on May 1 the Senate devoted itself to a number of routine legislative matters and then recessed until noon of May 2.

Anti-Lynching Bill Still on Senate Calendar

Before considering routine legislation, however, the Senate agreed to a motion by Senator Pat Harrison, Mississippi, Democrat, chairman of the Committee on Finance, to begin consideration of H.R. 3896, the bonus bill.

The effect of this was to displace the Costigan-Wagner bill for consideration. It did not, however, cause the Costigan-Wagner bill to lose its place on the Senate calendar. At some future date Senator Costigan can again move for its consideration.

Senators Costigan and Wagner and other supporters of the bill have announced that they will make another effort to have the Senate vote on the bill before the end of the current session.

On the other side, the Southern Senators have notified the proponents of the bill that they are organized for a determined filibuster and will do anything in their power to prevent a vote. They claim to have about 20 Senators ready to unite in a well organized force.

President Roosevelt on Lynching

The Administration has taken no part in the fight over the anti-lynching bill. While President Roosevelt has several times expressed himself against lynching he has not recommended the passage of a Federal anti-lynching bill.

On December 6, 1933, President Roosevelt, addressing a meeting of the Federal Council of Churches of Christ of America, said:

"This new generation, for example, is not content with preachings against that vile form of collective murder—lynch law—which has broken out in our midst anew. We know that it is murder, and a deliberate and definite disobedience of the Commandment, 'Thou shalt not kill.' We do not excuse those in high places or in low who condone lynch law."

In his annual message to Congress, January 3, 1934, he said:

"* * * crimes of organized banditry, cold-blooded shooting, lynching and kidnapping have threatened our security.

"These violations of ethics and these violations of law

call on the strong arm of government for their immediate suppression; they call also on the country for an aroused public opinion."

Addressing the Attorney General's Crime Conference on December 10, 1934, he said:

"I ask you, therefore, to do all in your power to interpret the problem of crime to the people of this country. They must realize the many implications of that word 'Crime.' It is not enough that they become interested in one phase only. At one moment popular resentment and anger may be roused by an outbreak of some particular form of crime such, for example, as widespread banditry; or at another moment, of appalling kidnappings; or at another of widespread drug peddling; or at another of horrifying lynchings."

Chances for Reconsideration of Costigan-Wagner Bill

The future of the Costigan-Wagner bill, so far as the present session is concerned, appears to be this:

If it can be brought to a vote in the Senate it will probably be passed. The chances of it being brought to a vote would appear to depend upon the length of the session. If the session is continued into the summer for one reason or another there might be a chance that the proponents of the bill could wear down the opposition.

On the other hand, if agreements are reached on other major bills and Congress decides to adjourn early in July, as it is now trying to do, advocates of other major legislation will not allow the anti-lynching bill to come up and interfere with their pet projects.

Opposition in the House

Should the bill come to a vote in the Senate and be passed it would be referred, upon reaching the House, to the Committee on the Judiciary. Representative Hatton W. Sumners, of Texas, chairman of the House Committee, is unalterably opposed to the bill, and would undoubtedly hold it up in committee.

By arranging for extensive hearings he and other opponents of the bill in the House are apt to so delay action that the bill, even if reported by the House Committee could not be brought to a vote before the end of the session.

Supporters of the bill are anxious to get it through the Senate during the current session since, in that case, its status would be the same at the beginning of the next session. If the next, or second session ends without final action by Congress, the bill will die and the fight will have to begin all over again in the next Congress.

Constitutional Provisions Cited

The provisions of the Constitution of the United States, quoted by proponents of the bill as furnishing authority for Federal anti-lynching legislation are the following:

Article IV, Section 4—The United States shall guarantee to every State in the Union a Republican form of Government, and shall protect each of them against invasion; and on Application of the Legislature or of the Executive (when the Legislature cannot be convened) against domestic violence.

Amendment IV, Section 1—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of every State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Section 5—The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.

Principal Arguments For and Against the Bill

During the discussion of the bill the principal arguments presented may be summarized as follows:

Arguments For

1. The enactment of a Federal anti-lynching law is necessary because existing state laws are either inadequate to prevent lynching or because state enforcement officers are ineffective in protecting individuals from mob law.

2. It is the duty of the Federal Government under the Constitution to protect its citizens against the loss of life, liberty or property without due process of law.

3. By making a county or other subdivision of a state liable for financial damages for a lynching, the law officers will be forced to become more diligent in protection against lynching and in prosecution of those guilty of lynching.

4. The enactment of a Federal anti-lynching law would arouse public opinion among taxpayers and cause them to insist upon the proper performance of duty on the part of law officers.

Arguments Against

1. A Federal law is unnecessary because public opinion against lynching has been increasing for years and will inevitably produce the desired effect without Federal interference.

2. The pending anti-lynching act clearly violates the provisions of the Constitution as an invasion of states' rights.

3. If Congress can levy a fine on a county within a state it can levy a fine on a state through the Federal courts, and thus wipe out a state's existence.

4. If the Federal Government is to punish lynchers and inefficient state or county officials, those officials will become even more lax and turn the task entirely over to the Federal Government, as they did in the case of the prohibition laws, thus defeating one of the primary objects of the pending bill.

Sample Bill for Classroom Study

The class in government desiring to consider the Costigan-Wagner bill as the Committees on the Judiciary of the Senate or House, using the following simplified form:

Be it enacted by the Senate and the House of Representatives in Congress assembled, That if any state or subdivision thereof neglects to protect any person or individual within its jurisdiction from death or injury at the hands of a mob of three or more persons, the law officers of such subdivision shall be tried in a Federal Court and, if found guilty of neglect of duty a fine of not less than $2,000 nor more than $10,000 shall be levied on such subdivision, the sum thus collected to be paid as damages to the family of the individual injured or killed.

Analysis of Anti-Lynching Laws Now Existing in the States

by James Harmon Chadbourn

Assistant Professor of Law, University of North Carolina

ANTI-LYNCHING legislation is broadly of two types. It is punitive or prophylactic, seeking on the one hand to punish when a lynching has occurred—on the other, to anticipate and prevent lynchings. If, however, the philosophy underlying punishment is prevention rather than retribution, then the division is pragmatic only. At least it is convenient to make it for purposes of discussion.

The main types of punishment in anti-lynching legislation are: (a) punishing lynchers by making lynching and mob violence statutory crimes; (b) fining counties and cities in which lynchings and mob violence occur; (c) removing delinquent peace officers. Other and more sporadic ones are: penalties for (1) failing to respond to an officer's summons for aid in protecting a threatened person; (2) violating safety zone established by officers; (3) failure on the part of the proper officer to prosecute lynchers; (4) refusing to testify in a lynching investigation; (5) publishing a printed or moving picture portraying a lynching; (6) failing to call special term of court. Often special procedures are set up to facilitate the infliction of these penalties, such as: prosecution on information in lieu of indictment, prosecution by the State's Attorney General, and provisions for offering rewards and hiring detectives.

The most familiar types of legislation designed to prevent lynchings by anticipating them are provisions for: (a) employing military force to guard a threatened person; (b) changing the venue of his trial; (c) calling a special term of court to try him, and (d) removing him to the jail of an adjoining county.

The majority of this anti-lynching legislation has been enacted during the past decade and a half. Much of it has been sponsored by Negroes. This is true of the Ohio law, which was introduced by Representative H. T. Eubanks. The Minnesota law is reported to have been engineered by a Negro clubwoman, Mrs. W. T. Francis of St. Paul, who persuaded Representative Theodore Christianson (white) to introduce it. H. J. Capehart, the colored member of the House of Delegates, is reported to have drawn and sponsored West Virginia's law. To win his own party to it he reduced the county forfeiture from $25,000 to $5,000. The bill was fought by a Democratic minority. The Pennsylvania law was drafted by Representative Andrew Stevens (Negro). All the House Democrats are reported to have supported it. The single negative vote was a Republican one. The first use of this law was by the wife of a Klansman killed in a riot resulting from a Ku Klux Klan parade. The New Jersey law is reported to have been passed at the behest of Negroes. While the Republicans claim credit for the bill's introduction and passage, it was approved by a Democratic Governor. A committee of colored citizens is credited with the Kentucky law. A Negro Representative introduced the Nebraska law.

Quite often this legislation represents the sublimation of a militant anti-lynching sentiment aroused by a recent lynching which has shocked the local conscience. The Columbia (S. C.) Record, June 29, 1931, states: "Lynchings at Marion, Ind., last year caused the Indiana Legislature to write a drastic anti-lynching law which Governor Leslie has signed." So also the lynching of Montgomery Godley at Pittsburg, Kansas, on Christmas Day of 1902, seems to have prompted the enactment of the Kansas law in 1903. And doubtless some of the statutes enacted in the past decade are the answer of proponents of state's rights and local self-government to the post-war agitation for a Federal law to curb lynching. The press, for example, so considered the Virginia law.

Anti-lynching legislation has been repealed in at least two states. Alabama passed an act in 1868 penalizing counties in which mob-murders took place. A special session of the Texas Legislature in 1897 created the crime of "murder by mob violence" and provided for the removal of peace officers delinquent in protecting prisoners taken from their custody and killed.

Lynching and mob violence under the common law have no technical signification. To the legal mind the terms connote a hodge podge of numerous crimes—riot, rout, unlawful assembly, murder, assault and battery, *et cetera*.

"Lynching has no technical legal meaning. It is merely a descriptive phrase used to signify the lawless acts of persons who violate established law at the time they commit the acts . . . The offense of lynching is unknown to the common law."

Statutes, however, have made lynching a crime, *sui generis*, in six states—Alabama, Indiana, Kansas, Kentucky, Virginia and North Carolina. The same is true of mob violence in four states—Illinois, Pennsylvania, New Jersey, and West Virginia. Four states have provisions for accessorial liability—Alabama, Indiana, Kansas, and Kentucky. Kentucky provides penalties for attempted lynching. Where death is a part of the statutory offense the maximum punishments are life imprisonment or death. Where injury only is necessary, the maximum penalties vary from five to fifteen years.

Seven of the ten states having statutory definitions of the crime of lynching or mob violence have had lynchings since the respective enactments: Alabama, 3; Illinois, 8; Kansas, 4; Kentucky, 6; North Carolina, 36; Virginia, 1; West Virginia, 1. In Alabama the perpetrators of one of the outbreaks were punished. All of the others went unpunished. No evidence exists, however, to show that any defects in the respective statutes account for the

failure to convict. Nor is it conceivable that this could be so.

Statutes creating and defining the crime of lynching and mob violence would be of little functional importance if their only effect were to supply new names for punishing the familiar conduct patterns known as murder, assault and battery, riot, rout and unlawful assembly. If the sole purpose were punishment of the active and passive malefactors, such statutes would merely supply a new phraseology for the indictment. Neither sureness of punishment nor its severity would be promoted. Even with such statutes there would seem to be nothing to prevent the prosecuting officer from drawing the indictment for any of the other crimes involved in the mob action.

But these statutory definitions do not operate solely in the sphere of punishing lynchers. They give a rhetorical unity to the whole body of the law which in any way deals with lynching. Counties are fined, peace officers removed, witnesses punished for refusing to testify. A lynching or mob outbreak must have occurred to invoke the infliction of these and other types of punishment. The statutory definition will determine the presence or absence of this necessary condition. In fact, in three states the terms "lynching" or "mob violence" are defined solely for this purpose. No new crime is created and no punishment provided. They are Minnesota, Nebraska and Ohio. Judged by their controlling effect on the enforcement of all laws dealing with lynching these statutory definitions are not mere surplusage. By the same token, a critical consideration of their varying concepts is not purely academic.

What, then, constitutes a lynching under the statutory law? With the exception of Kentucky, North Carolina and Ohio, it is the killing of any person by a mob. In Ohio it is an act of violence by a mob. In Kentucky it is the killing by a mob of a person in the custody of peace officers. In North Carolina it is conspiring to enter jail for the purpose of killing a prisoner or actually so entering. All ten of the states but Minnesota and North Carolina give a definition of mob, but, as noted, New Jersey, Illinois, Pennsylvania and West Virginia give none of lynching.

Analysis shows that the divergencies in legislative conceptions of a mob concern the minimum number of persons necessary, and their purpose and intent in assembling together. The former ranges from one in Alabama, Indiana and Kansas, and three in Kentucky, to five in Illinois, New Jersey and West Virginia. Nebraska, Ohio and Virginia provide only for a "collection" of persons. The following kinds of purpose and intent are requisite in one or more of the statutes:

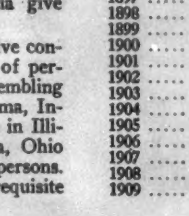
1. Any unlawful purpose with intent to injure anybody violently and without lawful authority. (Alabama, Indiana, Kansas. Also one alternative in Nebraska.)
2. The purpose of doing violence or injury to any one in custody of peace officers. (Kentucky).
3. An unlawful purpose and without authority pretending to exercise correctional (or regulative in Illinois) power over any persons by violence. (Nebraska and Ohio. Also an alternative in Illinois.)
4. Intent to commit assault and battery on anybody. (Virginia.)
5. Purpose of offering violence to the person or property of any one. (New Jersey and West Virginia.)
6. Purpose of doing violence to the person or property of any one supposed to have been guilty of a violation of the law. (Illinois.)—*Extracts, see 1, p. 192.*

Number of Lynchings in the United States 1882-1934

Table Prepared by Tuskegee Institute, Tuskegee, Alabama

Year	Whites	Negroes	Total	Year	Whites	Negroes	Total
1882	64	49	113	1910	9	67	76
1883	77	53	130	1911	7	60	67
1884	160	51	211	1912	2	61	63
1885	110	74	184	1913	1	51	52
1886	64	74	138	1914	3	44	47
1887	50	70	120	1915	18	57	75
1888	68	69	137	1916	5	49	54
1889	76	94	170	1917	3	36	39
1890	11	85	96	1918	4	60	64
1891	72	113	185	1919	6	74	80
1892	69	162	231	1920	7	53	60
1893	34	117	151	1921	4	58	62
1894	58	134	192	1922	6	51	57
1895	66	113	179	1923	4	29	33
1896	45	78	123	1924	0	16	16
1897	35	123	158	1925	0	17	17
1898	19	101	120	1926	7	23	30
1899	21	85	106	1927	0	16	16
1900	9	106	115	1928	1	10	11
1901	25	105	130	1929	3	7	10
1902	7	85	92	1930	1	20	21
1903	15	84	99	1931	1	12	13
1904	7	76	83	1932	2	6	8
1905	5	57	62	1933	4	24	28
1906	3	62	65	1934	0	15	15
1907	2	58	60				
1908	8	89	97	Total	1,291	3,352	4,643
1909	13	69	82				

—*Extracts, see 4, p. 192.*



Previous Attempts to Pass A Federal Anti-Lynching Law

by David O. Walter
Professor, Cornell University

A SPECTACULAR series of lynchings in Maryland, California, Missouri, and Tennessee last year (1933) called nation-wide attention to an alarming increase in mob violence. When Governor Rolph of California openly condoned the San José affair, it was clear that the machinery of the state would not be used effectively to punish the mob. Under such circumstances, it was only natural that besides the wave of denunciation of Governor Rolph there should be a demand for some action by the Federal Government when the states permit such activities. In response to this agitation, in the first six weeks of the recent session of Congress (1933-34), nine bills were introduced and were later under consideration by the judiciary committees of the House and Senate.

Such efforts, however, are not novel, but are only part of a series of attempts to have the Federal Government deal with this problem. The movement for a Federal anti-lynching bill received its first active support in the recommendation of President Harrison in December, 1891, that Congress pass a law to protect aliens from mob violence. This was a direct result of the difficulties arising from the outbreak in New Orleans in March of that year, when eleven Italians awaiting trial were taken from the jail and lynched. Louisiana made no effort to apprehend or punish the leaders of the mob. Since three of the victims were Italian citizens, their government protested, under the terms of the treaty of 1871. The United States was forced to reply that it had no authority even to speak in the matter, since under our Federal system the states had jurisdiction over such crimes. This failed to satisfy the Italian government, and strained relations ensued, until Secretary Blaine offered compensation to the families of the lynched men.

Following out the President's request, Senator Sherman of Ohio introduced a resolution instructing the Committee on Foreign Relations to draw up a bill to protect the treaty rights of aliens. Such a bill was submitted, providing that where acts which were crimes under the laws of the states were committed against aliens in violation of their treaty rights, the offenders should be prosecuted in the Federal courts; but that the statutes of the state should define the crime, prescribe the punishment, and regulate the rules of evidence, procedure, etc.

Senator Gray of Delaware led a powerful attack on the bill, on the grounds that (1) it drew its authority from the treaty-making power, but treaties are subject to the same constitutional limitations as are laws and may not invade the field reserved to the states; (2) in adopting state laws there would be an unconstitutional delegation of the legislative power of the Federal Government to the states; (3) there would be different punishments for the same crime in each of the forty-four states, according to the variations in state laws, which seemed inequitable; (4) such a law would give aliens an advantage over citizens, in the provision for removal of cases to Federal courts; (5) there would grow up a considerable machinery for the enforcement of Federal jurisdiction over the large number of aliens, paralleling state jurisdiction over citizens; (6) citizens would be subject to double jeopardy for the same crime; (7) the Constitution contains no specific grant of such power to Congress.

Senators Morgan of Alabama and Hiscock of New York defended the bill on the following grounds: (1) Congress has the constitutional power to pass laws to enforce treaties; (2) the Federal Government was granted by the Constitution jurisdiction over cases involving aliens; (3) it has been a long established practice for Congress to adopt state laws, even though they vary in specific content; (4) this subjecting of persons to trial by both state and Federal sovereignties for the same act has been held not to be double jeopardy; (5) this bill was limited in application to those aliens claiming a right under a treaty; (6) the bringing of these prosecutions in Federal courts was not essentially different from the right of Federal officers to remove suits brought against them from the state to the Federal courts. However, interest in the measure died down and it never came to a vote.

What interest Congress had in the lynching problem for a quarter of a century centered mainly on the protection of aliens in their treaty rights. Bills for this purpose were introduced in the Senate in 1893, 1899, and 1908, and in the House in 1900, 1902, 1903, 1905, and 1907; but in spite of frequent presidential recommendations, no action was taken until 1908. In December of that year, the House passed a bill recommended by the Department of State. Its provisions differed from those of the earlier bill by providing that "if two or more persons conspire to injure, oppress, threaten, or intimidate any alien in his free exercise of any right secured to him under any treaty of the United States, or because of his having so exercised the same, they shall be fined not more than $5,000 or imprisoned not more than ten years, or both." Although less doubt of its constitutionality was expressed than had been the case sixteen years before, the bill passed only by the deciding vote of the Speaker. In the Senate it was referred to the Committee on the Judiciary and there died. The proponents of the bill introduced similar measures in 1909, 1915, 1917, 1919, and 1920, but no action was taken. Finally, the Dyer bill of 1922 included a clause for the protection of aliens, adopting the form suggested in 1892; and since then the protection of aliens has usually been combined with general anti-lynching proposals.

Until 1921, similar measures on behalf of American citizens, particularly negroes, had even less success. Referring to the problem of lynching in his annual mes-

sage for 1892, President Harrison urged, this time in the interests of the colored race, that so far as such acts could be made the subject of Federal jurisdiction, the strongest repressive legislation was demanded. But the Congress to which this message was directed took no notice of the President's recommendation.

Apparently the first suggestions for a Federal law to protect negroes specifically against lynching were presented to Congress in 1892 in the form of petitions from the colored people of Riley county, Kansas, and from the Religious Society of Friends of New York and Vermont.

In 1894, petitions for investigation of lynching were sent to both houses of Congress, and a resolution for such an investigation was introduced into the lower house. In 1900, Representative White of North Carolina, a negro, introduced a bill for the protection of all citizens of the United States against lynching; and in the following year Representative Moody, later Associate Justice of the Supreme Court, introduced similar bills. In the same year, 1901, Senator Hoar, on request, proposed such a measure, while expressing doubts of its constitutionality, and later for the Committee on the Judiciary reported it adversely. Senator Gallinger's resolution in 1902 for an investigation of lynching met the usual fate and was laid on the table.

The subject did not again come before Congress until 1918, when race riots in Washington itself and highly inflamed race feeling in the South and Mid-West brought the problem once more into prominence. In 1918, Representative Leonidas C. Dyer of Missouri introduced a bill to protect citizens of the United States against lynching in default of protection by the states. Similar bills were introduced in the succeeding Congresses by Mr. Dyer, as well as by Representatives Moores, Gahn, Dallinger, and Ansorge. On October 31, 1921, Mr. Dyer reported favorably from the Committee on the Judiciary the so-called Dyer bill (H.R. 13), based on the various bills introduced, and similar in form to that proposed by Moody in 1901. Later proposals have followed closely the provisions of the Dyer bill. In its final form, the bill (1) defined a "mob or riotous assemblage" as an assemblage of three or more persons acting in concert for the purpose of depriving any person of his life or doing him injury, without authority of law, as a punishment for or to prevent the commission of some actual or supposed public offense; (2) declared that any state or governmental subdivision which failed, neglected, or refused to provide protection for any person within its jurisdiction against such a mob should be deemed to have denied to such person the equal protection of the laws; (3) provided that any state or municipal officer who had the duty or possessed the authority to protect such person and who failed, neglected, or refused to make all reasonable efforts to protect him or to apprehend or prosecute those participating in such a mob, should be guilty of a felony and so punished, as well as such officers who conspired with a mob; (4) provided that those participating in lynchings might be tried in the Federal district court according to the laws of the state, on evidence to the court that the officers had failed, neglected, or refused to punish such participants, or that jurors in state courts were strongly opposed to punishing lynchers; (5) made the county in which the person was lynched or (6) in which he was seized liable to forfeit $10,000, to be recovered by the United States through its courts for the use of the family or dependent parents of the victim of mob action; and (7) incorporated the usual provision regarding the treaty rights of aliens.

Opposition to this bill was vehement, almost entirely among the Southern Democrats. In a series of speeches obviously intended for home consumption, they attacked the policy and expediency of the bill. Much more cogent were the attacks on the constitutionality of the measure. Of course, if the Federal Government is to deal at all with the problem of lynching, it must be in pursuance of some grant of power in the Constitution. This the supporters of the bill attempted to find mainly in certain provisions of the Fourteenth Amendment: "Sec. 1 . . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws. Sec. 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." The opponents of the bill declared it to be an unconstitutional invasion of the reserved powers of the states, being an act of the police power. It was pointed out that in a long line of cases construing the Fourteenth Amendment, the Supreme Court has held it to apply only as a prohibition on state action, not on the action of individuals. Therefore the fourth section of the bill was clearly unconstitutional. Further, when sheriffs fail to afford reasonable protection to prisoners, they are usually violating duties imposed by state laws, and so cannot be considered agents of the state. Hence, even if there is a denial of equal protection, it is not the state which acts. The prohibition of state denial of equal protection is not a grant of power to Congress to assure equal protection; the failure of a state to act to assure equal protection is not such denial; otherwise, the failure to punish any crime would amount to a denial of the equal protection of the laws (which is obviously not the sense of the Fourteenth Amendment). Habitual exclusion of negroes as such from jury lists has been held to amount to a law denying equal protection. But while admitting that equal protection may be denied by unequal, unfair, and discriminatory administration of executive power, Mr. McSwain pointed out that the failure of officers to protect prisoners is exceptional and not habitual. Further, he asserted that the penalty imposed on a county was a tax, and thereby unconstitutional as being laid on a subdivision of a sovereign state.

Those advocating the measure stressed the necessity of Federal legislation to punish the crime of lynching, pointing out how rarely any effective action is taken to punish lynchers and urging that some means is necessary of putting the resources of the national government in play to prevent mob violence. On constitutional grounds, however, the supporters of the Dyer bill had more difficulty. They cited some of the same cases interpreting the Fourteenth Amendment to show that a state may deny the equal protection of the laws by administrative and judicial acts as well as by legislation; and that where a state does so, the Federal Government may pass corrective legislation. In addition, the failure of a state to protect persons within its jurisdiction is tantamount to a denial of protection. The failure of a sheriff to protect persons from mob violence, while a violation of his statutory duties, is still to be considered the act of the state. Also, the penalty on the county is a fine, not a tax, and so is not forbidden by the rule regarding taxation of government instrumentalities. Since the United States may sue a state, it may sue a subdivision of the state and enforce on it the judgments of the Federal courts.

On January 26, 1922, after five weeks of consideration, the bill passed the House of Representatives by a vote of 231 yea, 119 nay. Though the vote was not completely partisan, the opposition was mainly from the Southern Democrats. Furthermore, it was a group of Southern senators who forced the withdrawal of the bill from consideration by the Senate, using filibustering methods which Senator Underwood openly avowed were intended to prevent a vote on it.

Since the failure of the Dyer bill in the Senate, there have been no successful efforts to pass such legislation in either house. With the exception of a committee report in 1924 on which no action was taken, measures introduced in 1923, 1925, 1927, 1929, and 1933 were merely referred to the Judiciary Committee in the lower house. A measure proposed in the Senate in 1925 was treated similarly.—*Extracts, see 2, p. 192.*

Anti-Lynching Legislation In Present Congress

The Costigan-Wagner Bill

ON January 4, 1935, Senator Edward P. Costigan, Colorado, Democrat, and Senator Robert F. Wagner, New York, Democrat, jointly introduced S. 24, a bill "To assure to persons within the jurisdiction of every state the equal protection of the laws by discouraging, preventing and punishing the crime of lynching."

The bill was referred to the Committee on the judiciary and a subcommittee of that committee was appointed to consider it. The subcommittee, composed of Senators Frederick Van Nuys, Ind. (Chairman), Patrick McCarran, Nev., William H. Dieterich, Ill., Democrats, and George W. Norris, Neb., and Warren R. Austin, Vt., Republicans, held hearings on February 14 and reported the bill favorably to the full committee, which, on March 18, reported it to the Senate.

On April 24 Senator Costigan's motion to consider the bill was agreed to by the Senate. Debate began on April 25 and continued until May 1, when the bill was replaced for consideration by the bonus bill.

Following are the provisions of the Costigan-Wagner bill:

The enacting clause declares that the act is designed to secure to persons within the jurisdiction of every state the equal protection of the laws and to punish the crime of lynching.

Section 1 defines a mob or riotous assemblage as an assemblage of three or more persons, acting in concert, without authority of law, for the purpose of killing or injuring any person in the custody of any peace officer, or charged with, suspected, or convicted of crime.

Section 2 declares that if any state or governmental subdivision fails, neglects, or refuses to provide and maintain protection to the life or person of any individual within its jurisdiction against a mob or riotous assemblage, it will be deemed to have denied such person due process of law and the equal protection of the laws. The provisions of the law are enacted to the end that the protection guaranteed to persons in the several states and to citizens of the United States may be secured.

Section 3 (a) provides that where an officer or employee of any state or governmental subdivision charged with the duty of protecting life or person, who has an individual in his custody, fails, neglects, or refuses to make all diligent efforts to give such protection, or any officer or employee responsible for apprehending, keeping in custody, or prosecuting any person participating in such a mob or riotous assemblage who fails, neglects, or refuses to make all diligent efforts to perform such duties shall be guilty of a felony, and on conviction punished by a fine not exceeding $5,000 or by imprisonment not exceeding 5 years, or both such fine or imprisonment.

Section 3 (b) declares that if any officer or employee having in his custody or control a prisoner conspires with any person to put such prisoner to death without authority of law, or to suffer such prisoner to be taken from his custody or control to be so injured or put to death by a mob or riotous assemblage, shall be guilty of a felony, and those who so conspire with such officer or employee shall likewise be guilty of a felony, the participating parties on conviction to be punished by imprisonment of not less than 5 years nor more than 25 years.

Section 4 extends jurisdiction to Federal district courts to try and to punish, in accordance with the laws of the state where the offense is committed, all participants, provided it is shown that the state officials have failed, neglected, or refused to act or the jurors in the state courts are so strongly opposed to such punishment that there is probability that those guilty will not be punished. Failure for more than 30 days after the offense is committed to apprehend or indict persons who have participated in such mob or unlawful assemblage or failure diligently to prosecute such persons, shall constitute prima facie evidence of such failure, neglect, or refusal.

Section 5 provides for not less than $2,000 nor more than $10,000 liability of any county in which injury or death occurred to the injured person or the estate of the person killed. Action is to be brought in such cases and prosecuted by the United States district attorney in the United States District Court for such district, and, if the forfeiture is not paid on recovery of judgment, the court is to have jurisdiction to enforce payment by a levy or execution upon any property of the county or may otherwise compel payment by appropriate process; and any officer or other person of such county who fails to comply with any lawful order of the court shall be liable to punishment as for contempt and to any other penalty provided by law.

Section 6 provides that where a person put to death has been transported by the mob from one county to another between his seizure and death, the county in which he is seized and the county in which he is put to death shall be jointly and severally liable to pay the forfeiture provided.

Section 7 is the customary legislative declaration that if any provision of the law is held invalid, the application of the remainder of the act shall not be affected.

Should the Costigan-Wagner Anti-Lynching Bill be Passed by Congress?

PRO

Affirmative

★ *Senator Costigan, co-author of the anti-lynching bill, outlines the main arguments for Federal legislation.*

by

Hon. Edward P. Costigan

U. S. Senator, Colorado, Democrat

HIGH on the flawless marble which bounds the future home of the Supreme Court of the United States these words are carved:

"Equal justice—under law."

They impress me as adequate to begin and end the argument on the pending measure. It will help me to know what impression they make on others, especially the distinguished lawyers who are Members of the Senate, and who at various times have taken official oaths to uphold the laws and Constitution of the United States. As I view that declaration, it is rooted in centuries of struggle for orderly, civilized government, and for human rights and liberties.

It was, I believe, the year 1215—so dimly remote a day that few can picture the historic scene—when the barons of England forced from King John, with the enlisted skill of what may without lightness be termed the "brain trust" of the time, the Great Charter, which has ever since been considered the corner or key stone of the liberties of English-speaking countries.

In that charter was contained, as a concession from the English Sovereign to English barons, language reading substantially as follows:

"No freeman shall be taken, or imprisoned, or disseized, or outlawed, or banished, or anyways injured unless by the legal judgment of his peers or by the law of the land."

In one form or another that noble and fundamental declaration will be found in those pronouncements through subsequent ages which have brought us to our present heritage of civil rights and liberties. In essence it inheres in the Petition of Right, the Habeas Corpus Act, the British Bill of Rights, the common law, the Declaration of Independence, the Constitution of the United States, and the American Bill of Rights attached to that Constitution. It likewise inspires the constitutions of substantially all the States of the Union.

In other words, our rights and liberties rest in part upon the ancient covenant that all citizens are entitled, when suspected or accused of crime, to safeguards against arbitrary seizure and fair trial before an impartial tribunal, and shall not otherwise be subjected to personal indignity or execution.

Nowhere in any of these declarations of freemen will be found authority lodged in purely private citizens or aliens to act as arresting officers, prosecutors, judges, and executioners of other men or women. Yet, within the lifetimes of many present Members of the Senate no less than 5,071 men and women in our country have been summarily seized and unlawfully, privately, arbitrarily, and brutally put to death without the judgment of their peers or due process of law. Of this number about 1,400 have been white men and women; the remainder have been negroes.

Such lawless lynching through the years has been resorted to in substantially every part of the United States. The evil is in no final sense sectional or local; it is national and imperatively requires a national remedy.

Tested by the rule that national wrongs demand national remedies, it is evident that lynchings cannot be held in check without a Federal law. They are often interstate and always have a Federal character. Although about 11 of the 48 states—North and South Carolina, among them—have applied the restraints of reasonable state statutes with results considered excellent, the evil continues to break out with every practice of brutality and lunacy. The past 2 years, from California to Florida, have again shown these fundamental facts.

Among the main reasons for Federal legislation are these:

First. The proposed law is reasonable in plan and extremely moderate in terms.

Second. The Federal Government will not act until state officials have failed or refuse to protect persons in their custody or charged with, suspected, or convicted of crime.

Third. Financial damages, as provided in the proposed Federal law, are now allowed against cities or counties, or both, for mob injuries or death under state laws of 11 states of the Union.

Fourth. The proposed law would bring the pressure of taxpaying public opinion, as well as the support of peace officers, to guard counties against mob violence, well illustrated in the case of South Carolina where further lynchings have not occurred in certain counties of that state after the financial penalties were imposed.

Fifth. The proposed law rests on authority vested in Congress under the Constitution, by appropriate legislation, to safeguard the equal protection of the laws for persons within the protection of states; and the constitutionality of the proposal is supported by successive interpretations of the Supreme Court of the United States.

Sixth. Lawyers of high standing, such as the late Moorfield Storey, of Boston, former president of the

Pro continued on page 174

Should the Costigan-Wagner Anti-Lynching Bill be Passed by Congress?

Negative

CON

★ *Senator Borah argues that the provisions of the anti-lynching bill are in violation of states' rights and strike at the heart of the American form of government.*

by

Hon. William E. Borah

U. S. Senator, Colorado, Republican

WHEN the Dyer anti-lynching bill passed the House in 1922 it came over to the Senate, of course, for consideration. At that time former Senator Nelson, of Minnesota, was Chairman of the Committee on the Judiciary. He asked me to take the chairmanship of the subcommittee which was to pass upon the question of the constitutionality of the bill. I expressed reluctance to do so for the reason that I had followed the debate in the House very closely, and advised him that I had reached a definite conclusion, and that my mind was not really open upon the subject. He urged, nevertheless, that I take the chairmanship of the subcommittee, and I did so.

We spent some time in going over the question, studying it with care. We made a report to the full committee. It was an oral report. It consisted of discussion and reference to opinions and decisions. There was a full consideration in the committee. The opinion of the committee was that the bill was unconstitutional.

Former Senator Sterling of South Dakota reserved the right, however, to vote for the measure if it came to the floor, contending that he thought it ought to go to the Supreme Court for a definite decision on the specific question presented by that bill; that while he himself did not contend that it was constitutional, he thought there was sufficient doubt in regard to it to justify the matter going to the Supreme Court and having the question settled once and for all. But the matter was submitted to the Judiciary Committee, and the Judiciary Committee overwhelmingly, and as I recall, unanimously, with the exception of two or three who made certain reservations—that is, reserving the right to express themselves upon the floor—was of the opinion that the bill was unconstitutional.

There were some parliamentary maneuvers thereafter. I do not know that they are greatly important, but they would seem to have some importance due to the fact that notwithstanding the committee was practically unanimously opposed to the measure on the ground of the constitutional principle, nevertheless it was afterward reported out. Six members of the committee changed their positions, but stated that they were changing their positions to enable the matter to come to the floor for full discussion, that they had not changed their opinion, however, as to the unconstitutionality of the measure, but in view of the situation it was thought proper to bring it to the floor for full consideration. That is the reason why notwithstanding the fact that the committee thought the bill was unconstitutional, nevertheless, the committee reported it out.

We all know what happened. It was before the Senate for 2 or 3 days on two or three occasions, and then the leader of the Republicans, the majority leader, withdrew the measure from further consideration. The move after the first vote of the committee on the constitutionality of the measure was purely political.

I do not, of course, recall with complete accuracy how the vote stood in the committee. I know that it was overwhelmingly of the opinion that the measure was unconstitutional. My remembrance or recollection is that there were only two or three Members, at most, who reserved any views to be expressed upon the floor, I, myself, had no doubt the bill was not constitutional. I never have had since.

I believe in the objective which these able Senators have in view. I believe in what they would like to accomplish. I have a profound respect for the high motives which moved them. No one can believe in lynching. It is the most cowardly and brutal crime of which human beings can be guilty. But, as to the constitutional question, I have not changed my mind in regard to it. Neither am I convinced that it is a sound policy to remove responsibility from the different local governments of the communities for the enforcement of law. In the long run that results in breaking down all sense of duty upon the part of the citizen.

I should be very glad to have the Supreme Court pass upon the question if I knew of any way to do it without stultifying my own convictions as to what the law means. To my mind, if this kind of bill can be passed and sustained by the Supreme Court we have utterly annihilated all state sovereignty; we have broken down state lines completely. I can see no escape from that conclusion.

There is an absolute precedent for this bill in the National Recovery Administration, which deals with intrastate business, and a complete precedent in the Agricultural Adjustment Administration, which deals with intrastate business. If you can go into the State of Idaho and take charge of a local business and direct that business man as to how it shall be run, and take the man who does not run it according to the rule passed by the Federal Government, and put him in jail, you can go into Alabama and take the sheriff by the shirt collar and make him abide by the rules which a Federal Congress has also laid down. If you can punish me under Federal law for not running my grocery store according to a rule or

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Costigan, *Cont'd*

Massachusetts and American Bar Associations have carefully analyzed and fully endorsed this type of legislation, and Chief Justice Hughes, of the Supreme Court, some years ago was a member of a national conference which unanimously adopted a resolution recommending such Federal legislation.

Seventh. The San Jose lynching in California in the late fall of 1933, which started a new national demand for such a law, is one proof that lynchings are not due to legal delays. Dean McMurray, of the University of California Law School, at Berkeley, has declared that California's recent record for criminal convictions is better than England's. Moreover, the criminal courts where the San Jose lynchings occurred were not congested with cases at the time, and the two white youths there lynched might have been promptly and impartially tried by jury.

Eighth. Charges of crimes against women, even without opportunity to prove their truth or falsity, are statistically shown to be among the less frequent causes of lynchings; and many of the alleged offenses, which have led to lynchings, have been shockingly trivial.

Ninth. Medical opinion more and more leans to the view that the limitless barbarities of lynchings spring from a sadistic type of madness, which can be repressed by community influence, and which, if not repressed, is only satisfied by unspeakable acts of savagery.

Tenth. Mob law endangers, as does nothing else, the safety of all life and property, and the continuance of free government.

Eleventh. The progress of civilization is measured by the successive triumphs of law over lawlessness.

Twelfth. The proposed law is already strongly endorsed by highly representative organizations in every part of the United States, having a total estimated membership of 53,570,000 men and women.

Recently my attention was drawn to a volume by Dean C. Worcester which deals with methods adopted in the Philippine Islands, which finally proved effective in controlling tribal head-hunters. The old practice of head-hunting in the Philippine Islands apparently was not halted there by merely punishing individual offenders. Not until the community was aroused by the burning of villages in which head-hunters resided, thereby inflicting community loss, did that savage practice disappear. The lesson is not without significance even for America.

The same economic principle is indeed invoked in the state anti-lynching laws to which I have referred, and properly, in the proposed Federal legislation. It is one definite purpose of the legislation, as submitted to the Senate, that economic pressure on taxpayers shall be brought to bear by legislation to prevent practices which have disgraced our nation at home and dishonored it abroad.

It is fully recognized, I think, by students of this subject that mobs rarely form without local sanction; that they are almost never organized without knowledge of the peace officers of a community; and that if, at the inception of this lawless practice, the community frowns upon it, the mob can ordinarily be dissipated with little difficulty, and the violation of law averted.

If, under the proposed legislation, the taxpayers of a given community believe they will be subjected to taxes to pay damages to the injured person seized by the mob, or to his family if he is slain, it must be obvious to any one who knows human nature that mobs will usually be halted in the beginning.

Nor am I indulging in theory when I say this. Professor Chadbourn, of the University of North Carolina, after calling attention to the fact that in South Carolina the provisions of a similar state statute have been applied and damages have been collected from South Carolina counties in which lynchings have occurred, shows that in no instance where such damages were collected in a given county did a lynching subsequently occur in that county.

We have, therefore, highly respectable authority on practice, as well as sound theory, to support what may at first blush impress as novel some not familiar with this legislative proposal. It is not novel. It has been tried. It has succeeded.

It may suffice, broadly speaking, to make one or two further general references to the problem, the proposed remedy, the reasonableness and moderateness of the separate provisions, and the general plan. Lynching is not declared to be murder under the pending bill. That is unnecessary. We already have statutes dealing with murder. It will be noted that a peace officer is held accountable under the measure only in two instances:

In the first place, if he fails to use all diligent effort to avert a lynching in his community, thus without effort permitting a mob to take a prisoner to slay him, a penalty attaches which is much more moderate than the one which attaches, for example, under a statute in my state for the less important offense of permitting a prisoner to escape from custody.

The other offense—a graver one—is that where a sheriff, in violation of his oath of office and all law-abiding standards, conspires with members of a mob to bring about injury to a citizen who has been seized without lawful process, or to turn the prisoner over to those who intend to put him to death. In that case, likewise, the gravity of which will be recognized by all who believe in orderly government and realize that civilization, after all, has only been attained through successive triumphs of law over lawlessness, a peace officer is subject to imprisonment limited to 5 to 25 years. Certainly no one familiar with our criminal laws will regard such a penalty, to be applied by courts, as in any respect excessive.

More and more and in some respects for the better, in the travail of our great crisis the stereotyped discussion of the constitutionality of proposed Federal legislation has been silenced. I shall, therefore, merely review briefly the basis of the constitutional argument in support of the measure, so that no one may contend that this aspect of our problem has been ignored.

It should first be said that the Committee on the Judiciary has twice pronounced in favor of the proposed legislation, once a year ago, and again this spring. That committee's membership of eminent lawyers gives us no little initial assurance in approaching the subject.

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Borah, *Cont'd*

regulation made by some Federal department, you can punish the officers and citizens of another state for not conducting themselves according to some Federal law in the matter of protecting life.

I have been opposed to those propositions consistently, because I know they strike at the very foundation of state sovereignty. I believe we can only have a great Federal Union by having great individual sovereign states, and that when the latter are destroyed we may have a republic in name, but we will no longer have a republic in fact.

Twenty years ago I declared:

"A government from Washington by commission, reduced to its last analysis, is no different from a government by satrapies from Rome. God pity this Government in the hour in which we shall look to Washington for that economy in public expenditures, that comprehension of the common needs, that devotion to the general interests, the power and the willingness to correct abuses and distribute justice, all so essential to a democratic form of government, rather than to enlightened public opinion gathered up and crystallized into law through those agencies of government which reach back and down to the great body of the people—the sole sovereignty of the Republic.

"If there is anything now well settled, worked out through centuries of test and trial, it is that each member of the Federal Government must have complete and indepent control of all matters domestic and internal and which relate alone to the individual members."

I have already said I sympathize with that which the Senator from Colorado would accomplish, and neither do I regard this bill as a sectional bill. I do not think the South ought to take it as such. We all know that the crime of lynching is committed all over the country in the different states. So I do not regard it as a sectional bill at all, but I do regard it as in conflict with the most fundamental principles upon which this Republic rests and in violation of the spirit and purpose of our dual system of government. It strikes deep and it strikes hard at the whole theory of state sovereignty. And, after all, there is nothing in all the realm of government more essential to the happiness and well-being of the American people than the right of local self-government.

It is my belief that this type of bill would not prevent lynching. The class of crimes to which lynching belongs can only be prevented by the education of the people, by building up public opinion against it, and by bringing the people to realize that it is to their detriment and to their everlasting shame to have such crimes committed in their respective communities. Without the moral support and the intellectual backing of the communities in which such occurrences happen, the power of the Federal Government will be perfectly futile in undertaking to eradicate this kind of crime.

Therefore, I do not look at this measure as constituting a remedy for lynching; I do not believe it will accomplish that objective; I do not think it can be accompliished in that way. Any scheme which removes responsibility from the citizen cannot be in the interest of good citizenship.

Let me say that the American Negro has always been noted for his fidelity to American institutions. It is one of the distinguishing characteristics of the Negro. Whatever his faults may be, and all races have them, his fidelity to American institutions, his loyalty to his country, and his devotion to the great underlying principles of our Government, as he understands them, are crowning virtues of the American Negro. We hear little talk of communism and other "isms" from the lips of the colored people.

When the Dyer anti-lynching bill was before the Senate, owing to the fact that I was chairman of the subcommittee, I received much censure from leaders of the colored race for my position, and, naturally, from colored people generally. It finally led to my addressing a mass meeting of colored people in this city to explain my position upon this question, which I did one Sunday afternoon.

I undertook to discuss it from the viewpoint of preserving the integrity of our Government as we had built it and of appealing to the colored race to respect our Government as it had been constructed by the fathers. It is my belief that there were not a dozen individuals in that vast audience that afternoon who were not in full sympathy with my position when it was explained to them. I do not think that they want to infringe upon the fundamental principles of the Constitution; I do not believe they entertain any desire to do that; but, in my opinion, if they should succeed in passing a measure of this kind they would be instrumental in dealing a blow at the American Government, constitutionally speaking, the importance of which could hardly be overstated. I have no doubt the Negro feels strongly about the problem with which the authors of this bill would deal, but I would not be afraid to present the question of maintaining the integrity of our institutions to any group of Negroes, North or South.

The Constitution of the United States is what is expressed in the terms of the document itself. The Court may, for reasons which affect courts the same as they affect other individuals, come to conclusions which at a particular time seem to construe fairly the Constitution of the United States. I remember after the Civil War, when the reconstruction measures were on their way to the Supreme Court of the United States, measures which, in my opinion, did more to engender ill will in the South than did the war itself. Those measures were never fully passed on by the Supreme Court, but some proceedings were had which has never since been approved by the Supreme Court of the United States. Courts are human, and we must expect such things, and I have no criticism to make. I do not ask for anything more than a sincere devotion to the cause of justice as the court sees it.

Chief Justice Marshall said:

"No political dreamer was ever wild enough to think of breaking down the lines which separate the states and of compounding the American people into one common mass."

Now we have done that. We did it under the N. R. A.; we did it under the A. A. A.; and this bill is in perfect harmony with those two measures. I venture to believe,

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Costigan, *Cont'd*

I call attention first to section 4 of article IV of the Federal Constitution, which reads:

"The United States shall guarantee to every state in this Union a republican form of government."

It is hardly necessary to say that when mobs take over control of government and lawlessness is rampant, a republican form of government is denied, and Congress, if the emergency is deemed sufficient, is justified in making provision for a republican form of government, even as the President may use the Army and the Navy for the same purpose on due provocation.

Even more important than that provision of the Constitution, however, is section 1 of article XIV of the Constitution, which reads in part as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

Omitting, in part, the amendment continues:

"Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5 of article 14 of the amendments provides:

"The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

Looking to this language we recognize a broad grant of authority to the Congress to legislate for the protection of the men and women of this country who are affirmatively declared by the Constitution to be alike citizens of the United States and citizens of the respective states in which they dwell.

Law is always a measuring rod of civilization. The Great Charter of King John tested the boldly asserted progress of British freedom in the thirteenth century. Our Bill of Rights proves the dignity and achievements of our own age as it gauged the age of Washington. Yet certain it is, and it should be added, that our present drive on interstate crime and in behalf of reasonably secure American citizenship will never consolidate its forces until lynching is specifically added to federally barred offenses. Public opinion at last demands such action as an indispensable safeguard of our nation. The Attorney General of the United States cannot fully and effectively arm against the scattered but powerful criminal elements of our country without this specific authority. We must aid him and our nation by completing the mobilization of our effective forces without further delay.

Certain living American principles which in the long run affect our conduct and determine history should be called into action. One is that ours is a government of laws and not of men; another, that justice to human beings and the equal protection of our laws are foremost concerns of the state.

Every repetition of mob brutality denies its victims the right of speedy and impartial trial and the equal protection of the laws guaranteed by the Constitution. No man can be permitted to usurp the combined functions of judge, jury, and executioner of his fellow men; and whenever any state fails to protect such equal rights, I submit that the Federal Government must do its utmost to repair the damage which is then chargeable to all of us.—*Extracts, see 3, p. 192.*

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by Hon. Robert F. Wagner

U. S. Senator, New York, Democrat

★ *Senator Wagner, co-author, argues that reliance upon local action to prevent lynching is wrong in principle and futile.*

VIEWED even in its narrowest aspects, punishment without law means punishment of the innocent. No less distressing than punishment of the innocent is the infliction of punishment out of all proportion to the crime. Of the 28 victims of lynchings during 1933, 15 were charged with only minor offenses. Of the 16 names upon the roll of infamy in 1934 only 10 were even accused, much less proved guilty, of major crimes. Five were tortured for such trivial departures from good taste as writing an insulting note, using opprobrious language, fist fighting, talking disrespectfully, and stealing. To cap the climax, one unfortunate was shot during the sport of a man hunt for another.

I have heard the claim that horrible crimes provoke whole communities to uncontrollable bursts of passion; but this plea can never rectify the severe punishment of the trivial offender, or the torture of the innocent. Besides, the passion which a civilized code of law recognizes is confined to the individual and is unpremeditated in inception and swift in execution. But the crime of lynching is all too frequently accompanied by planned and prolonged orgies of mob brutality that would have shocked the soldiers of the Inquisition.

We may read the lurid stories of the blood-lusty Roman tyrants without finding anything more horrible than the stories of whip, of lash, and of flaming brand that accompany our modern exhibitions of primitive torture. Even the hardened gladiator in the arena would customarily turn to his emperor for some sign that cruelty should cease; but there is no check when the fury of a maddened mob is unleashed upon its helpless victim.

But it is only when we turn from its individual to its social implications that we grasp the full menace of the crime of lynching. There is no concealing the fact that this practice is directed primarily against the members of a single race, which has suffered 503 of the 554 outrages inflicted since 1918. This discriminatory suspension of civil rights is breeding a terrible resentment among over 12,000,000 people of the United States, who live under and not apart from our Constitution and who have demonstrated their willingness to die heroically in its defense.

I do not desire to harp even upon the effects of this injustice upon a single race. Violating all American principles, the crime of lynching is a defiant assault upon government itself. When the killing of George Armwood

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Borah, *Cont'd*

however, that when the sky shall have cleared, when the troublous days shall be over, and we shall come to realize the value of this Union and the institutions under which we live, we will do as our forbears did after the Civil War—we will swing back to the great principles and abide by them. I am not disturbed because of things which happen in troublous times. While I do not always "go along," I nourish the belief that in the end the sound common sense, both among the masses and among the leaders, will prevail.

Abraham Lincoln said:

"To maintain inviolate the rights of the states to order and control under the Constitution their own affairs by their own judgment exclusively is essential for the preservation of the balance of power on which our institutions rest."

There is the cornerstone of this Federal Republic. Mr. Lincoln did not enjoy the reputation of being a great constitutional lawyer, but no mortal man ever had a firmer grasp of the aims and purposes and principles of the Government for the preservation of which he yielded up his life.

There can be no such thing as a great Federal Union without great states. There can be no such thing as a Federal Republic unless the states at home preserve their rights as sovereign states to the extent to which the Constitution has defined them.

If this bill does not wipe out state lines, if the A. A. A. does not wipe out state lines when it deals with a farmer in my state, if the N. R. A. does not wipe out state lines when it runs a grocery store in my state, I do not know by what means we could wipe out state lines.

It is not alone because I am opposed to this bill, but it is because I believe in the principle which it seems to me the bill violates. This principle is so plain, so vital to our Federal Republic, that it would be shameless moral cowardice in one who sees it, as I do, not to maintain it.—*Extracts, see 7, p. 192.*

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by Hon. Millard F. Tydings

U. S. Senator, Maryland, Democrat

★ *Senator Tydings doubts that the passage of the bill would accomplish the purpose designed and objects to its penalties upon counties.*

I AM sorry to say that in the State of Maryland recently there was a lynching. I desire to point out that on that particular occasion State troops were rushed to the scene, but apparently insufficient numbers of them were there, and the people broke into the jail, got hold of the culprit, and killed him. However, the Governor did not stop there. The attorney general of the State and a battalion of the National Guard went into the community in an attempt to ascertain who had been guilty of this offense. The matter wound up in a riot in that section, and for a long while it looked as if additional blood would be spilled.

I do not mean to condone the lynching at all, but what I do mean to point out is that even with the best of intentions a State executive, really on the job, and with the National Guard at his disposal, and with a desire not to have lynchings, and to punish those implicated in lynchings, quite frequently finds that in the face of a mob he is powerless to carry out the law.

Governor Ritchie, in my State, won the commendation of people of humane instincts all over the country. To some extent it affected his political career, perhaps. I do not think, however, that was the deciding event. At any rate there was the Governor who perhaps did not act quickly enough, or did not do this, that, and the other, as we look back upon it, but who had every desire to throw around the accused every safeguard possible, and further than that, to go in after the deed was done and to right the wrong so far as he could. That happening shows the futility, almost, of trying to find those who really were guilty of the offense. I simply make that observation to show the difficulty even when it is intended by high authority to bring order out of chaos in a situation of that kind.

I know that the Senator from Colorado, in introducing this bill, was actuated by instincts and attributes of humanity, and I have tried to bring myself in line with his general thoughts. One of the difficulties I have found in supporting the bill—and I wish to overcome all of them that I can—is that when the courthouse is sold, so to speak, or when the $10,000 fine is levied on the county, I do not like to levy an extra tax or assessment on law-abiding people who in that particular community were opposed to the crime of lynching. I happen to know that in this particular case many people in the community were just as much opposed to it as the Senator was.

Yet under the terms of the bill we would tax them for their proportionate share of the $10,000. I suppose the Senator's answer to that question is, "That is true"; but there is no better way we could find to bring some measure of recompense to the children or the offspring of the man who had been lynched. As that was the best way we could get at it, we had to do it in that way. Nevertheless, the fact remains that it does penalize innocent people who had no part in the lynching, and to that extent we are embracing the very thing which we seek to eliminate.

My own feeling in the matter is that I should like to see every State in the Union, rather than the Federal Government, take whatever action it could logically take to discourage and minimize the promptings toward lynching.

I myself believe the number of lynchings is declining. My own State had a very enviable record. I am very sorry that recently that record was not maintained. I should like to support any legislation I could which would eliminate lynching. My only fear is that I doubt very much that we will accomplish what we hope by the bill which we are now discussing.

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Wagner, *Cont'd*

took place upon the Eastern Shore of Maryland the Governor and the State troops were helpless before the fury of the mob. The attorney general was threatened with death because he sought to obtain the arrest of the culprits. In another recent case the lynchers burned the courthouse itself. This destruction of a temple of justice was more than a concrete example of contempt for law. It was symbolic of the inconsistency between the concept of law and the practice of lawlessness.

There is no better evidence that lynching is an attack upon law than the claim boldly made by some of its apologists that it is necessary to cure the law's delay. What could be more grimly ironical than this lawless impatience with the slowness of the law? What could refute this contention more completely than the proof that since 1928 over half of the people lynched have been snatched from the custody of peace officers or dragged from the cells of battered jails where they were already in the hands of justice? What evidence is there that those so anxious to hasten the law have been eager to prosecute those who interfere with its processes?

This lawless practice is alarming not only because it oversteps the boundaries of government. It is particularly serious because it corrupts government and inoculates public officials with the virus of the mob. Not long ago a high executive extolled the mass killing of two men and promised executive pardon to anyone convicted of the crime. When representatives of the State condone the subordination of law to lawlessness, then, indeed, the time for remedy is at hand.

Even more significant is the effect upon the atmosphere breathed by the general public. When Claude Neal was tortured to death four to seven thousand people, responding to a 15-hour notice by wire, by radio, and by the press, gathered to watch the sport. Who can measure the lifelong effect of this spectacle upon the little children who were present at the scene, and who shrieked with crazed delight as they plunged their sharpened sticks into the burning flesh?

Events of this nature cannot be localized in their effects. We are living in a trying age. In every nation of the world force is now at war with reason, the reign of despotism is contending with the reign of law, while violence and persuasion are struggling for mastery. In such a period of flux, prejudice and hatred recognize no arbitrary bounds. It is but a short step from summary treatment of those suspected of crime to supression of every shade of economic or political opinion that disagrees with a transitory majority. A fire cannot be localized until it is extinguished.

The plea has been made that lynching can be ended by State action alone; but the plea crumbles under the weight of the facts that it must carry. There have been 5,071 lynchings in the United States since 1882, and 280 since 1922. Since the turn of the century only eight-tenths of 1 per cent of these crimes have been followed by prosecution, and in only 12 instances have convictions resulted.

Thirteen years ago, upon the theory that the States would stamp out the peril in their midst, the Senate refused to pass the Dyer anti-lynching bill. Since then only six States have passed laws to restrain lynching, and in only one of these States had the problem been a serious one.

Reliance upon local action alone is wrong in principle. How can local action alone prevent lynchings which occur just when sober public sentiment has become engulfed in the passions of the mob and when the agencies of law enforcement are prostrate or unwilling to intervene? One might as well expect an epidemic to cure itself, or by its own good will prevent its ravages from extending to other parts of the community. Federal assistance is imperative if lynching is to be stopped.

This bill does not invade State rights. It interferes only with mob rule. Nowhere is the sentiment against lynching stronger, nowhere is the desire for Federal assistance in combating the scourge within their midst more predominant than in those areas where lynching has reached its peak. Fifty-three million people, without regard to locality or walk of life, have united in pleading for the enactment of this Federal anti-lynching law. The sentiment for such a law is as widespread as the impulse of humanity; it is as deep-rooted as the spirit of Americanism; it is as imperishable as our Bill of Rights.

In the history of this country no campaign for civil justice has been waged in vain, and public opinion in the United States will never be satisfied until "Judge Lynch" is smothered under a heavy blanket of national resentment.—*Extracts, see 4, p. 192.*

by Hon. Arthur Capper

U. S. Senator, Kansas, Republican

★ *Senator Capper expresses himself as convinced that the bill is constitutional and that its passage will go far toward curbing lynching.*

It seems to me the Costigan-Wagner anti-lynching bill must appeal to and command the support of every Member of the Senate who believes in law and order.

I am not going to recite the great volume of statistics which tells the story of the prevalance of lynching in this country. Everyone knows that this blot on our civilization, lynch law, is far too prevalent in the North as well as in the South, and neither its victims nor its executioners are confined to any one race.

Neither am I going into a gruesome relation of stories of mob murders. Suffice it to say that the details of cruelty and barbarity, of savagery and bloodthirst, as related from time to time in newspapers and magazines and by word of mouth, stagger the imagination. That such scenes are enacted in enlightened America is a sinister blot on our boasted civilization.

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Tydings, *Cont'd*

In that connection a lady came to my office the other day asking me to support the bill. By way of arriving at her viewpoint I said: "What would you have done if you had met Hauptmann the day after Mr. Lindbergh's baby was discovered dead?" She said, "I would have shot him down in cold blood, without the least hesitation." Yet the lady was there asking me to support anti-lynching legislation!—*Extracts, see 9, p. 192.*

▼

Hon. Tom Connally

U. S. Senator, Texas, Democrat

★ *Senator Connally argues that Congress has no authority to enact legislation giving the Federal Government power over state governments, as provided by the pending bill.*

THE vice in the attitude of many who propose departures from our well-known balances between the States and the Federal Government, is that they propose to give the Federal Government the power to determine when the State has properly punished people, and if the State has properly proceeded then the Federal Government will not intervene. The power to decide when and how the State government has performed its function is the power to oust the State completely, because it is a power to decide when the Federal Government shall intervene.

Within its proper sphere the Federal Government may enact any law within its constitutional power, and such a law operates directly on the citizen. It does not operate through the State as a subdivision of the Federal Government. It operates directly on the citizen, and the citizen is amenable to the Federal Government.

The State within its proper sphere may enact a law. It operates, not through the counties but directly upon the citizen himself. The citizen owes two allegiances There are two responsibilities. For instance, the Federal Government levies income taxes. We do not apportion those taxes to the States, but those taxes operate on every citizen of the Republic, and that obligation is an obligation which he owes to Washington. The State may levy an income tax or other tax, and it operates on the citizen directly in its own way.

When it comes to a criminal law, if the crime is one over which the United States Government has jurisdiction to deal, the citizen is guilty or not guilty, as the facts may indicate. For instance, the Federal Government had a prohibition law and the States had prohibition laws. If a man sold liquor in violation of both laws, he could be punished twice. Why? Because he owed the obligation to the Federal Government to observe its law; and when he violated the Federal law, he was punishable in a Federal court. If by the same act he violated the law of Virginia or the law of Nebraska on the liquor question, he was subject then to punishment in the State courts, and the Federal conviction could not be urged as a bar.

The Supreme Court of the United States says that the only power which Congress possesses under the fourteenth amendment is the power to pass Federal legislation making ineffective, innocuous, and void such acts of the State legislature or of the governor as are in violation of the fourteenth amendment. When that is all the power which is possessed, whence comes this marvelous power to enact the proposed bill? What law of a State is being complained of here? Go and search the statutes and the constitutions of all the States in the Union and bring back a statute which violates the fourteenth amendment! Of course, not only the courts but the Congress would have the power to make such statute ineffective and void. The Supreme Court says that that is the whole power which the Congress possesses.

An examination of these decisions of the Supreme Court should convince any searcher for the truth that the first section of the fourteenth amendment applies only to State action and is a prohibition on State action alone; that it does not add to the rights of individuals against other individuals. This bill deals with individuals. It seeks to hold responsible private individuals for individual acts, whereas the whole theory and basis of the fourteenth amendment is that it acts upon the States and upon State action; and that it does not authorize the Federal Government to invade the domain of rights for whose protection the citizen must look to the State and to prescribe the character or the degree of protection to be vouchsafed such rights.

These decisions announce the doctrine that, so long as the State does not itself by some State action deny equal protection of the laws, the Federal power cannot be invoked, and, in the event of such denial by a State, only that degree of Federal power sufficient to correct the action of the States in violation of the amendment may be invoked. The only affirmative Federal right created by that part of the fourteenth amendment is the right to be exempt from discriminatory action on the part of the State. Such is the general scope and purpose of the amendment.

This bill, in its first section, provides—

"That the phrase 'mob or riotous assemblage' * * * shall mean an assemblage composed of three or more persons acting in concert, without authority of law, for the purpose of killing or injuring any person in the custody of any peace officer or suspected of, charged with, or convicted of the commission of any crime."

By what process of reasoning does it become murder because three men kill another and not murder when two men kill another? On what theory is it suggested that the Government should step in and condemn a crime when committed by three men and should refuse to step in when the same crime has been committed by two men?

In order for this bill to be invoked it is provided that the person assaulted or injured, in one case at least, must be in the custody of a peace officer, or he must be suspected of a crime or charged with or convicted of a crime. Is it giving equal protection of the law to the

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Capper, *Cont'd*

I do desire, however, to call attention to the fact that persistent propaganda calculated to make it appear that rape is practically the sole cause or excuse for lynching and that Negroes are lynched only for crimes against white women is not true. Men are tortured, maimed, killed for minor crimes; all too frequently for imaginary offenses.

Every such mob crime weakens the moral fiber of the people who participate and many of those not actually participants and tends to the substitution of mob law for statute law.

Surely no one needs to argue the injustice, the danger, the shame of lynching. That much is conceded. Lynching works a gross injustice, because the accused is denied the fundamental and constitutional trial by due process of law. This injustice operates most generally against our colored citizens. Will anyone deny that, as a race, these are good and loyal citizens? Has this race ever been lacking in loyalty to our country and our flag? Will not its record, in peace and in war, compare very favorably with any other class of our population? Does not the splendid force of 400,000 Negroes in the Military Establishment of the United States during the World War speak with sufficient emphasis of their valor, of their devotion to their country?

By what process of reasoning can anyone justify the people of this race being denied the constitutional right to trial by jury when accused of crime? There can be only one answer to that question.

Lynching is not only a monstrous injustice to those persons lynched and to the group against which it is chiefly practiced; it also is a danger and a menace to orderly government in the United States.

Moreover, it is a shame and a humiliation and a disgrace to the name of America among the nations of the world; it holds up to scorn, it sets at naught our protestations about democracy, justice, equality before the law. It cannot be tolerated for long if our Republic is to endure.

I do not know that this measure, enacted into law, will bring an end to this barbaric hangover from the Dark Ages. I do believe it will go far toward curbing lynchings and bringing about orderly government by law; and we should do everything in our power to bring this about.

One of the chief talking points urged against this measure is the question of its constitutionality. I am not disturbed by that question. To my mind, it has been very ably disposed of by speakers supporting the proposed legislation. To those worrying about the alleged unconstitutionality of the bill I suggest that it is the duty of the courts to pass on the constitutionality of legislation enacted by Congress. If this measure is unconstitutional, its opponents need not worry about its ever becoming the permanent law of the land; the courts will take care of that by promptly setting the act aside.

I can see no reason for a prolonged argument in support of this measure. Its purposes are so laudable, its motives so much in the interest of humanity, its need so manifest, that I cannot understand why anyone should oppose its passage. I intend to vote for the measure if given the opportunity.—*Extracts, see 4, p. 192.*

by The Senate Committee on the Judiciary

★ *The Senate Committee on the Judiciary reports that the bill does not propose invasion of states' rights but that its passage will aid state authorities.*

THE Committee on the Judiciary, to whom was referred the bill (S. 24) to assure to persons within the jurisdiction of every State the equal protection of the laws by discouraging, preventing and punishing the crime of lynching, having considered the same, report the bill favorably to the Senate and recommend its passage.

The Committee, during the Seventy-third Congress and during the Seventy-fourth Congress, has given much consideration to this bill. Hearings were held by a subcommittee at which evidence was presented demonstrating to the committee's satisfaction the continuing and increasing need for Federal legislation of this character.

When a measure similar to the pending reported bill was before Congress in 1934 and its enactment into law appeared to be more than a possibility, two lynchings occurred in January, 1934, a month prior to the public hearings conducted by this committee. During the months from January 30 to June 8, 1934, when public opinion in favor of legislation to curb the practice of lynching was particularly articulate, no lynchings occurred. During the first week of June, 1934, word was generally circulated that hope for the enactment of the proposed measure had been abandoned. On June 8 there was a lynching in Mississippi, followed in rapid succession by two lynchings in Alabama, 1 in Texas, 1 in Tennessee, 1 in Louisiana, a third in Mississippi, a third in Alabama, 1 in Georgia and 1 in Florida. By March, 1935, 3 lynchings occurred.

In the committee's opinion it is more than a coincidence that the practice of lynching, coupled with a complete failure of the government of those States involved to apprehend and punish the participators of these crimes, supports the need for Federal legislation.

In the Sixty-seventh Congress a bill (H.R. 13) having similar purposes to the pending measure was passed by the House of Representatives, but was not allowed to reach a vote in the Senate. At that time the constitutionality of this legislation was discussed in much detail. The committee has had the benefit of briefs submitted at that time in support of the so-called "Dyer bill" by attorneys of national reputation. Favorable reports of the Judiciary Committees of the House of Representatives and the Senate arrived at the conclusion that the legislation was clearly constitutional. Numerous court decisions were cited in support of this conclusion.

After giving earnest thought to the consideration of S. 24, the committee has reached the conclusion that as amended the bill is constitutional and should be passed. It is the opinion of the committee that the proposed

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Connally, *Cont'd*

innocent man who is charged with no crime, who has committed no crime, who has not been arrested and charged with a crime to say that if he is assaulted, if he is attacked by a group of three or more and his life is taken or he is injured, the Federal Government will not step in, whereas if he is charged with a crime, if he has been convicted, the Federal Government will step in and bring him under the aegis of its protection? Is it equality of treatment under the Constitution to give a greater degree of protection to one who has violated the laws of his State, who stands charged with a heinous crime, perhaps, and to deny that same degree of protection to the man whose hands are innocent of his neighbor's blood and whose soul is unspotted by the commission of any crime?

Supporters of the bill say it is not their purpose to include within the provisions of the bill a denunciation of a crime if committed in a labor dispute. Let us see what is the situation presented.

A man working in a factory, or in a shop, or on a railroad, working to gain a livelihood for his family, committing no crime except the crime of working, is assaulted in a labor dispute by a group of more than three men. His life may be taken, or he may suffer bodily injury. Under the terms of the bill the Federal Government would not step into the case.

However, if those individuals are not engaged in a labor disturbance, if they are acting through malice or passion, if they are acting through the compelling motive of some private grudge, and three or more of them assault or attack another private individual or kill him, then the Federal Government would step in, hail them into court, and try them under the terms of the bill.

The bill does not content itself with making it a crime for individuals who may come within its terms, but it brings within the condemnation of the court the county in which the offense may be committed. It also brings within the compass of the bill's denunciation the county into which those who are guilty may take the victim. Is it fair or is it just to the innocent taxpayers of a county, who may be in nowise guilty of any offense under the bill or under the State law, to have their county penalized by the assessment of fines and of money penalties because certain lawless individuals may take the life of another individual or may inflict bodily injury upon him?

Our theory of government is that the Federal Government is supreme within its own sphere of action and that the State government is supreme within its sphere of action. When did it become constitutional for the Federal Government to drag into a Federal court a subdivision of a sovereign State and lay heavy penalties upon it? If that be constitutional, then we may try a State in a Federal court, because if we can try one subdivision of a State we can try all the subdivisions of the State, and all the parts being equal to the whole, under the theory of the Senators who offer the legislation the Federal court could arraign at the bar a great sovereign Commonwealth and lay down upon it penalties and forfeitures because it had not complied with some Federal rule of action.

How would the fathers who wrote the Constitution and those who took part in the early history of the Republic view any such doctrine declared here in the Senate of the United States?

This is a time in which, beyond the borders of the Capitol, we hear many threats against our form of government. We hear those who would change its structure and perhaps destroy it. Others would modify and revise our institutions. Daily and nightly over the radio and in the public forums we hear various groups of doctrinaires who, taking advantage of public dissatisfaction and of unrest among the body of our people, propose their curious nostrums and their new remedies for the ills which they conceive to be besetting us at this time.

I am not surprised to hear those demands beyond the Capitol but it is alarming when we have other revolutionary doctrines proclaimed upon the floor of the United States Senate itself. When Senators rise in the Senate and advocate radical departure from the judicial and political policies of the past, it causes me more disturbance than all the wails and outcries by these misguided and misguiding prophets of evil beyond the precincts of the Capitol.

I do not defend lawlessness or lawbreaking. I deplore lynching as much as does the Senator from New York and as much as does the Senator from Colorado. I am opposed to murder in any form, no matter whence it may come.

The Senator from Colorado cited the fact that there are 11 States in the Union which have anti-lynching laws. In that list the name of Colorado does not appear. In that list the name of New York does not appear. There can be no question of the constitutional power of the State of New York to enact an anti-lynching law. There can be no question of the power of the State of Colorado to enact such a measure. I am wondering why these distinguished Senators, these eminent lawyers, versed in the constitutional law and history of the United States, have not exerted themselves and devoted their efforts and their labors to securing the enactment by the State of Colorado of an anti-lynching law? Why has the great sovereign State of New York, standing with its shoulders high above the other States in wealth and population, under its acknowledged powers at the present time enacted an anti-lynching law? Is it any less a crime if the act should be committed in New York than if it should be committed in the State which I, in part, represent? Is there any sanctity which goes with the soil of Colorado which makes an act good in Colorado and a crime in another jurisdiction?

The Supreme Court of the United States has repeatedly said that such powers as those sought to be granted under the bill we are discussing fall within the exclusive jurisdiction of State authority. Let us leave them there. Let us leave intact the balance between the Federal and the State authority. Let us teach the citizens of the State that responsibility goes with power and authority, and let us strengthen those ideas of responsibility. Let us give greater fiber and toughness to the campaign of

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Judiciary Committee, *Cont'd*

legislation is "appropriate legislation" to discourage and prevent the evil of lynching wherever in the United States that evil exists or is or may be committed. It is the belief of the committee that the proposed measure does not propose an invasion or subversion of the rights of States. On the contrary, the measure is an aid to the several States in assuring to their citizens the equal protection of the laws, both State and Federal, to which all citizens are entitled.

▼

by Charles H. Tuttle

Former U. S. District Attorney, New York

★ *Mr. Tuttle presents arguments in support of the constitutionality of the Costigan-Wagner bill.*

THE time has come when the Nation should defend itself against this national evil which has assumed colossal proportions. Whatever our views of States' rights may be, we must recognize that under present-day conditions in the solution of national questions, State boundaries are becoming less distinct. This change is due to social development, to science and invention, and rests upon the closer relations of trade and amity which exist between communities. More and more the national resources are called upon for the making of local improvements within the several States and for the relief of their population from economic and physical distress. Hardly, therefore, does it seem fair that where the National Government is, on the solicitation of State and local communities, making ever-increasing investment among them, they should deny to the National Government an interest and a voice in preventing in their own midst recurrences of mob insurrection which destroy the security of the national investment and which undermine the strength of the national credit and of the national institutions.

Surely, nothing in our National Constitution prevents our National Government from undertaking such an act of self-preservation and from protecting itself against the consequences of the break-down of due process of law through State inaction and of wholesale discrimination in the effective protection of the laws through the tyrannies of mob rule.

The power thus to protect the Nation against internal national dangers of this character were expressly conferred upon Congress by the United States Constitution in Section 4 of article IV; and in Section 1 of article XIV (fourteenth amendment).

By necessary implication, as well as by the express mandate of the fifth section of the fourteenth amendment, Congress has not only the power but the duty to protect the rights conferred or guaranteed by the Federal Constitution either by express declaration or by implication. The Supreme Court has uniformly held that the National Government has the power, whether expressly given or not, to secure and protect the rights conferred and guaranteed by the Constitution. The Supreme Court has accepted as essential to the national supremacy the necessary doctrine that Congress, in the absence of a positive delegation of powers to the State legislatures, may, by its own legislation, enforce and protect any rights derived from or created by the National Constitution.

Furthermore, the protection which these sections of the Federal Constitution throw around the rights which they guarantee is a protection not only against their violations by a State acting in its corporate capacity, but also against their volation by individuals acting in any official capacity derived, directly or indirectly, from the State. In consequence, any ministerial, executive, legislative, or judicial officer, deriving his authority, directly or indirectly, from a State, who invades any of these guaranteed rights is acting unlawfully; and Congress has the power to enact proper legislation to protect these rights from any such invasion.

Indeed, the Supreme Court has applied the fourteenth amendment to mere matters of administration by local officials even though the municipal or State law under which they were acting contained in itself no arbitrary discriminations and no denials of due process or the equal protection of the laws.

It follows from the foregoing that nonaction of an officer of the State is reached by the fourteenth amendment as much so as if he acted positively and directly. In other words, if an officer stands by and refuses to protect a citizen and does not act with the forces at his command in the face of impending or threatening danger, it is just as much an act of the State under the fourteenth amendment as if he had taken part in the lynching himself. Indeed, the nonaction of an officer is as much the act of the State as the direct and positive act of the officer and may be reached under the fourteenth amendment by appropriate legislation by Congress. Were this otherwise, the fourteenth amendment could be nullified in any State by wholesale nonaction of the State or local officers.

These principles readily sustain the constitutionality of the anti-lynching bill.

This bill is expressly limited by its own definitions to official action or non-action resulting in the denial of due process or the equal protection of the laws. It applies only to persons injured or killed through mob violence on account of race, creed, or color, or with the purpose or consequence of depriving the victim of due process of law or the equal protection of the laws where such person was suspected, accused, or convicted of any crime or offense or in the custody of any peace officer.

In other words, this statute does not seek to reach all cases of assault or murder through violence or all cases in which human rights have been denied or destroyed by public anarchy. It in no sense attempts to set up a Federal criminal code in the several States or to give to the Federal Government a regulatory, supervisory, or concomitant power in connection with the administration

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Connally, *Cont'd*

education which has already made such a great advance, and we shall in time, as nearly as any people can meet any question, as nearly as any people can be perfect in any regard, solve most of the evils at which the bill is supposed to be directed.—*Extracts, see 4, p. 192.*

▼

by Hon. James F. Byrnes

U. S. Senator, South Carolina, Democrat

★ *Senator Byrnes says the fining of counties for lynchings has been tried and proven a failure.*

I BELIEVE that lynching is murder whenever the victim of the mob dies at their hands. It is impossible for me to understand how men, and particularly lawyers, can make a distinction between lynching a human being when that crime is participated in by three persons, and the murder of a human being by an individual. I can conceive of no defense for it. Lynching, like any other form of murder, is a violation of the law of God and of man. For it I have never made, and never will make, an apology.

I know that those who have participated in the commission of such offenses have argued that their action was due to the fact that the law was not enforced; that delays prevented the enforcement of the law; that lawyers would appeal from the decisions of lower courts, delay punishment being meted out to the criminal, and that has been the excuse of many who have been guilty of the crime of murder, called "lynching."

To me it has always seemed that when a human being is killed by three persons rather than one, instead of lessening the offense it but exaggerates and aggravates the offense.

While this is true, I know that in the light of history with reference to lynchings in this country nothing could be more unfortunate than the enactment of legislation of this character.

In order to get an idea of the views of the committee in reporting the bill, I have examined the report. After setting forth the details of the measure, the report of the committee stated the reasons for this proposed legislation—that while the committee was considering this bill from January to June no lynchings occurred in the United States; that during the first week in June 1934 word was generally circulated that hope for the enactment of the measure had been abandoned, and on June 8 there was a lynching in Mississippi.

Because we may fail to appreciate what has happened throughout the Nation, it is interesting to note that statement. When word that the bill was not likely to pass was generally circulated—I do not know who circulated it, but it seems, according to the report of the Judiciary Committee, that word was generally circulated throughout the Nation in the first week of June 1934, that there would be no legislation at that session—immediately, away down in Mississippi that information was made known, and then a lynching occurred on June 8; and then the information drifted over into Alabama, and two lynchings occurred in Alabama. It seems that those individuals for 6 months had been waiting to lynch someone, waiting for the opportunity to commit murder. Finally, when the information came to them that the Judiciary Committee would not report the bill, they immediately proceeded in Mississippi to have 1 lynching, in Alabama 2, in Texas 1, in Tennessee 1, in Louisiana 1, a third in Mississippi, a third in Alabama, in Georgia 1, in Florida 1; and it is stated that by March 13, 1935, 3 lynchings occurred. So evidently from January 1 until March 13, 1935, the information must have been generally circulated throughout the country that there would be no legislation on the subject at this session, and the lynchers proceeded to kill human beings because of that fact!

The committee said:

"It is more than a coincidence that the practice of lynching is practically stopped when Federal legislation designed to curb this practice is pending in Congress."

That immediately follows the statement that between January 1 and March 13, 1935, while legislation was pending, three lynchings occurred; but the declaration of the committee is that if a bill is pending there will be no lynchings. Therefore, it follows that the sane, sensible thing for the Senate to do is to permit anti-lynching legislation to be pending, and thereby, according to the committee, make impossible lynchings in this country.

Senator Costigan gives another reason for having the bill reported at this time. He says that one reason why the bill would stop lynchings is that—

"The proposed law would bring the pressure of taxpaying public opinion, as well as the support of peace officers, to guard counties against mob violence, well illustrated in the case of South Carolina, where further lynchings have not occurred in certain counties of that State after the financial penalties were imposed."

The Senator refers to the fact that in South Carolina there is a statute authorizing the beneficiary to bring an action against the county in which a human being loses his life as a result of the action of a mob, when he is "lynched," and no other word is used, without authority of law. He can sue the county for $2,000.

That statute was enacted pursuant to a provision of the State constitution, for it is written in the constitution of the State of South Carolina that the beneficiary of the victim of a mob has the right of action to which I have referred.

The clause penalizing a county in the case of a lynching was offered in the constitutional convention by the late Senator Tillman. He stated at the time that it might not prove effective, that he doubted its effectiveness, but that it might serve as a scarecrow. The adoption of the provision by the constitutional convention was solely in expression of the law-abiding sentiment of the people of

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of the criminal laws of the State. It deals only with those instances where the personal rights guaranteed to all American citizens by the fourteenth amendment have been invaded by mob violence with the active concurrence or through the nonaction of State or local officers, or where such rights cannot, by reason of local conditions, be properly vindicated in the local courts.

As has already been stated, the fourteenth amendment not only prohibits certain action or nonaction by the several States and public and local officers but also, by necessary implication, confers upon every American citizen and guarantees certain rights which the Congress may protect by all appropriate means in the exercise of plenary police power.

Furthermore the reciprocal duty of the States under the fourteenth amendment sustains the constitutionality of the anti-lynching bill. The fourteenth amendment is as much the law of the separate States as it is of the United States. The individual rights which it confers upon American citizens and guarantees are rights existing under the law of the land and hence are rights which are entitled to recognition and protection by the law and jurisprudence of the several States.

By ratifying the fourteenth amendment the several States have bound themselves to perform and discharge the duty of affording to all persons within their respective boundaries the equal protection of the laws, and the Federal Government has guaranteed this performance. The duty to perform is a positive, affirmative duty of equal protection. Wherever this duty is not performed, regardless of the excuse, there is a breach by the State of the contract, and the obligation falls on the guarantor, the Federal Government, to assure performance and to redress whatever wrongs have been suffered by reason of the breach of the guaranty. In the case of private corporations it is well settled that where an obligation rests upon such corporation as a positive duty in favor of third persons the failure of an officer or agent to discharge that duty is actionable, even though the failure may have been merely an incident of wrongful conduct on the part of the officer or agent for which the corporation is in no way responsible as a principal. In other words, the rule is well established that where misconduct or nonaction of an agent causes a breach of the obligation or contract of a principal, there the principal will be liable in an action, whether such misconduct or nonaction be willful, malicious, or merely negligent; and the form of the action, though undeniably in tort, is treated virtually as an action in contract and governed by the same rule of damages.

The analogy seems obvious. If State or local officers may in one sense be regarded as acting outside of their employment or authority in not preventing a lynching, nevertheless such conduct may constitute a neglect or default on the part of the State to afford the equal protection of the law. Against such neglect or default Congress is authorized by the fourteenth amendment to adopt all appropriate remedial measures in order to vindicate and protect the rights possessed by all American citizens under that amendment. Such action by Congress is in no way an invasion of State rights but should be welcomed by the States as an additional protection to fundamental privileges which they too are equally bound to guarantee.

So, likewise, the constitutionality of the anti-lynching bill can be sustained under and by virtue of the power and duty of Congress under the Federal Constitution to guarantee the republican form of government in the several States.

The right to due process of law and the equal protection of the laws are fundamental conceptions of justice and inherent in the very idea of republican or free government.

Obviously the substitution of mob rule for free government and the obstruction of the immutable rights of private citizens by mob violence, where the objective or consequence is the overthrow of due process of law or the equal protection of the law is a violation of the right of the injured citizen to enjoy the advantage and privileges of a republican form of government. In the exercise of the police power expressly conferred upon Congress to preserve the republican form of government in the several States and to vindicate the right of the private citizens thereof to enjoy the protection of free government, Congress may enact all appropriate remedial measures and may set up machinery for the enforcement thereof by the Federal courts. Such police measures may, obviously, be both preventative and remedial—may seek to prevent a destruction of constitutional rights by the substitution of mob rule for free government and may provide remedies for wrongs suffered by reason of such substitution.

The provisions in the anti-lynching bill for penalizing the county where a lynching occurs by a sum to be fixed as liquidated damages is constitutional and thoroughly sustained by judicial authority.

The policy of imposing liability upon a civil subdivision of government is familiar to the common law. A State may, in the exercise of its police power, impose absolute liability upon a city to be collected by an injured individual. In the earliest English statutes there are repeated instances of communities being fined or mulcted in damages for robberies and assaults occurring in their midst, the theory being that the taxpayers would, in consequence, hold their local officials to greater vigilance.

Moreover, under our theory of law, every citizen is, in a sense, a police officer; and has certain rights and duties in the prevention of crime. The old posse comitatus which made every able-bodied citizen, over the age of 15, subject to impressment by the sheriff to assist in preserving peace, and the power of a citizen to arrest for a felony on view without warrant, are illustrations of the inherent police authority of every citizen. In these modern days these duties have been delegated to hired officers of the law, but the underlying obligation still remains and cannot be violated.

Unless respect and reverence for our orderly institutions of constitutional government are preserved in the minds of our people, the end may quite conceivably be national dissolution. Judgment by mob and trial by fury

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Byrnes, *Cont'd*

South Carolina against the lawlessness of a mob, the same sort of sentiment that has resulted in the gratifying decrease in the number of lynchings in that State of recent years.

But lest someone should conclude that the Senator from Colorado was correct in believing that the enactment of the section of the bill offered by him authorizing a suit against the county would result in decreasing lynching, I wish to quote some statistics with reference to the State of South Carolina before and after the adoption of the constitutional provision.

In the Negro Year Book, published by the director of the department of research of Tuskegee Institute, it is stated that for the 11-year period from 1885 to 1895, inclusive, there were 1,897 lynchings in the United States, and 45 in the State of South Carolina. The constitution of South Carolina was adopted December 4, 1895. For the 11-year period succeeding the adoption of that constitution, with its anti-lynching provision, to wit, during the years from 1896 to 1906, there were 1,206 lynchings in the United States, and 43 in South Carolina. Therefore, while there was a marked decrease in the number of lynchings throughout the Nation, in South Carolina, where this anti-lynching provision had been written into the constitution, there was a reduction of only two in the number of lynchings in the 10 years succeeding its adoption as compared with the previous 10 years.

From that I would judge that Senator Tillman was right in believing that it would not be an effective deterrent insofar as the commission of this offense was concerned.

I think it ought to appeal to a man's common sense, that when a mob of men willing to take human life, because their reason for the time is dethroned by the commission of some crime which they believe so horrible as to demand instant punishment, get hold of the criminal and take him out into the woods, they will never be deterred from committing murder by the fear that the county in which they live may at some future time be sued for $2,000 by the heirs of the man who is lynched. On the contrary, it is my belief that under those circumstances, when a mob seeks to take the life of the rapist or the murderer, nothing will deter them except the assurance that the man they have in custody will receive a speedy trial at the hands of the court and when they have confidence in the honest enforcement of law by their courts. Only when such confidence exists can we hope to deter the commission of this offense.

Throughout the history of my own State I know of cases when not only sheriffs, but judges, have risked their lives in order to prevent lynchings. Never have I known of a case when the Governor of the State would not call out the militia, call upon armed forces, in order to preserve order and to prevent a lynching. It can be done in that way. It can never be done by enacting a Federal statute to usurp the powers of the State, and to endeavor to frighten State officers with punishment by the United States courts.

I would not undertake to discuss at length the question of the constitutionality of the proposed law. Nevertheless, I cannot refrain from expressing this opinion. In order to visit punishment upon a murderer or a rapist a mob is willing to violate law, to disregard all law. If the bill under discussion is unconstitutional, as I believe it to be, I would not want the Congress of the United States to follow the spirit of the mob and to disregard the provisions of the Constitution of the United States in order to visit punishment upon lynchers.

The United States Supreme Court has so clearly construed the fourteenth amendment and has so forcefully indicated its opinion as to legislation which would seek to control and to punish the acts of an individual within a State that it seems to me there is hardly any room for doubt as to the unconstitutionality of the proposed measure.—*Extracts, see 9, p. 192.*

▼

by Hon. Hugo L. Black

U. S. Senator, Alabama, Democrat

★ *Senator Black maintains that the passage of the bill would serve to increase lynching and would be harmful to labor.*

I CLAIM that the Costigan-Wagner bill could well be designated a bill to increase lynching, a bill to suppress labor unions, a bill to punish and prosecute sheriffs and peace officers who fail to perform satisfactorily the duties which owners and operators might claim they should perform in the case of a strike. I claim that it is not only a bill which would subject the sheriffs to prosecution in the Federal courts for neglect to protect persons from injury but it goes still further and would subject every sheriff in this Nation to a penalty not in excess of 25 years if he failed to exercise that diligence which the coal operators, for instance, thought he should exercise in order to protect their property in case of strike.

I do not claim that the Senator from Colorado and the Senator from New York intended to introduce a bill which would have that effect, but I assert that there never has been a self-respecting court in this Nation that could hold to the contrary of the views I have expressed with reference to this particular measure. I base that statement on the measure itself and on the report submitted by the Judiciary Committee, and particularly upon the brief in support of the report.

Therefore I assert that if the bill should become a law, it would have an accentuating effect like unto that of the fourteenth amendment. There were many who believed that it was necessary to adopt the fourteenth amendment in order to protect colored citizens of the country from an infringement of their rights. Some were honest and sincere in that belief. They believed that the amendment would serve to effectuate such a purpose. I submit that if at that time it could have been known that over a period

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Tuttle, *Cont'd*

will not pause at the hair line of any nice distinctions. Once proclaim that the bitterness of public indignation has justification for replacing the processes of law and of constitutional government with the violence of the lowest passions, and the whirlwind will speedily be the reaping from this sowing of the wind.

Furthermore, there is national danger, particularly in these times, in causing large sections of our population to believe that they are outside the effective protection of government and in thus loosening their attachment to our institutions.

Lynching no longer can be said to be a matter purely of local or State concern. It has become a grave national menace, injurious to our country's security, its institutions, and its sovereign influence both at home and abroad. Recent decisions by the Supreme Court have established that the Constitution is not a rigid thing, incapable of adaptation to new conditions and dangers, and that it must, from time to time, be interpreted and applied as a living and feasible principle and theory of government, capable of protecting, through plenary police power, its own security and the security and moral and economic welfare of its citizens. It is true that new conditions cannot create new constitutional powers, but new conditions may, through interpretation in the light of new necessities, bring into being new exercises of inherent powers.—*Extracts, see 8, p. 192.*

▼

by Henry L. Mencken

Editor, Essayist and Critic

★ *Mr. Mencken urges the passage of the bill as an earnest effort to stop lynching, leaving to the courts the decision on its constitutionality.*

THE problem before Congress is the simple one of providing legislative measures to execute the fourteenth amendment.

It is too manifest to need argument that every lynching deprives its victim of his life without due process of law, and denies him an equal protection of the law. The states are charged with punishing all such invasions as the common rights of the citizens, but some of them have failed in their effort to do so, and others have not honestly tried. Meanwhile, lynchings continue, and though they do not increase in number, they show some tendency to increase in savagery.

To large numbers of American citizens life in certain parts of the country becomes intolerably hazardous. They may be seized on any pretext, however flimsy, and put to death with horrible tortures.

No government pretending to be civilized can go on condoning such atrocities. Either it must make every possible effort to put them down or it must suffer the scorn and contempt of Christendom. That Congress has aspired to adopt necessary legislation seems to be agreed by all lawyers, though they differ somewhat as to the wisdom and the constitutionality of the bill now before the Senate. On this point I can offer no opinion, but I hope I may at least suggest that the best plan will be to make a beginning by enacting that bill and then waiting for the proper courts to advise upon it. If defects are found in it, however, whether legal or practical, they may be remedied. But nothing can be accomplished until an actual experiment is undertaken. Even if the worst comes to the worst and we find that preventing lynching is actually impossible, that discovery will at least be something.

I know of no civilized man who is in favor of lynching. There are differences of opinion as to whether this bill will achieve the end that it seeks.

There has been some discussion as to whether the provision levying a fine on the community would work. I am not prepared to argue that that as it stands is completely defendable. My opinion is that that provision as it stands probably offers a ground for argument against the bill that might be disposed of by leaving out the provision, which does not seem to be necessary at all.

The chief virtue of this bill, as I see it, is that it does not try to set up lynching as a new crime and provide new penalties for it. It presumes lynching is murder, which is precisely what it is, and it punishes it as such. The only new crime it sets up is the crime of conniving at lynching. That is probably not sufficiently covered by our existing law, and that part of the bill needs no defense. The part that provides for penalties, as I have said, on the town, is at least controversial. There are unquestionably cases in which the heaviest burden would fall on the most innocent people; the taxpayers, the well to do, and educated people are very seldom in favor of lynching. They may find it impossible for various reasons to protest against it, but I have never heard of many of them being in favor of it.

At the time of the lynching in Maryland the decent people of the Eastern Shore were against it. They could do nothing, because after all, they had to live there. They needed help from outside their own area. The Governor of Maryland at the time tried to give them that help, but it turned out under our constitutional laws in Maryland it was impossible to make that aid efficacious.

My impression is that the decent people of the State of Maryland in the lynching area are heartily ashamed of the lynching, and one of the curious evidences of it is the vote that Governor Ritchie got in that area last election, although there was a very violent feeling against him immediately after the lynching.

I am in contact with very many of the better people of the Eastern Shore, and I think it is safe to say not one of them is in favor of the lynchings which took place there. They were carried on by the very low orders, and the most the upper sort of people did was do nothing, and the reason they did nothing was simply because they faced a sequel situation which could not be dealt with effectually.—*Extracts, see 5, p. 192.*

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Black, *Cont'd*

of 10 years, out of 529 cases coming under the amendment, 509 would have been decided in a way to protect vested interests in their predatory special privileges in this Nation, the amendment would not have had easy sailing, even at that time.

The Costigan-Wagner bill is a lineal descendant of the measures which were enacted as laws in this country and about which the great historian Claude G. Bowers has written that magnificent book entitled "The Tragic Era."

There is nothing new in the proposal except that today, to him who will read it, it is plain that it goes much further than its proponents in earlier days ever intended it should go, and that it is bodily placing in the Federal courts of the Nation, in courts presided over by men appointed for life, the unquestioned right and privilege of penalizing every sheriff, every peace officer, every judge, and even every governor of every State, if he fails, forsooth, to be as diligent as the owners think he should be in protecting the property of those whose employees are out on strike.

I deny that this is an "anti-lynching" bill. The public, the great body of the citizens of the country, have been led to believe that we have in this bill a simple measure against lynching. I assert that if the bill should become a law not only would it affect the so-called "14 lynchings" which occurred in the country in 1934, but I assert that in the first year of its operation there would fall under the terms of the proposed law more than a thousand cases arising all over the Nation which would not even remotely in any sense of the word touch a lynching.

Let us suppose, as has frequently happened, that a strike has occurred. An individual miner or trainman—and I have tried both of them on such charges—may be charged with injuring a strikebreaker. It is charged that three of them were present. Suppose a prosecuting attorney should decide the man was not guilty. Would he dare to tell the jury so? He would not. Would that prosecuting attorney dare to rise from his chair and tell the jury, "I believe that the killing of this miner was justified"? He would not. Why would he not? Because he would know that his Government, the Government of the United States, a democracy, had passed a law which subjected the prosecuting attorney to 5 years' imprisonment, and to have the stigma of felony put upon his brow if he neglected to do everything he could to convict that man.

Let all who desire secure any political advantage they may think is theirs from attempting to force such a bill upon the American people. If it should pass, time will tell who was right. I state that there is no class in America which would be more injured by this bill than those who belong to the colored race, whose wages have frequently been so low as to be a crime against civilization and against decency, and whose wages have been raised more by organization of men than by any other method, and, practically, that has been the only method by which their wages have been raised, until the present administration began to secure the enactment of its legislative program.

I realize that someone may say, "Well, there has been some kind of a recommendation of this bill by organized labor." That is wholly immaterial. I make the assertion that if this bill should become a law, within 2 years from the date it was signed and went into operation there would be the greatest change in the position of organized labor this country has ever known in a like period of time, because this law would crucify organized labor, and the man in the ranks would know what was the matter.

I do not yield to any man on this floor in my loyalty to the ideas of good working conditions for the people of this country, white or black, or any other type. I yield to none in the desire to see that they receive an honest compensation for an honest day's work. If I had my way about it, I would make the minimum wages higher than they now are. I yield to none in my desire to see that they have good working conditions as to hours and the conditions in which they toil. But I state that nothing could be more absurd or more ridiculous than for people to come here at one session of Congress and fight and become elated over a victory which prevents the issuance of injunctions by Federal courts against strikers, and at the very next session of Congress come and offer and pass a bill which makes a mob of any three or four strikers who gather together, as a consequence of whose actions somebody is injured or killed.

It is interesting to note the theory upon which the right to impose a penalty on a county is based. Several years ago, in reading Macaulay's History of England, I found the beginning of the idea of imposing a penalty upon a county. It came into England from Denmark. The idea at that time was that when the hue and cry was raised every citizen had to respond and make an arrest. There were few sheriffs and few officers charged with the duty of apprehending criminals.

When the Normans conquered England, it was found, as had always been the case, that there was great antagonism between the Normans and the Saxons and the original natives of England. The result was that there were a great many Normans who were found murdered from time to time, and since they were in control of the country in those days, which some of us might now call primitive, a law was enacted which imposed a fine upon each hundred, the hundred being somewhat similar to the present township. The theory was that those citizens must apprehend the criminal.

That law did not work very satisfactorily, because it was found that in the poor hundreds usually 1 man or 2 men had to pay the entire penalty, men who had nothing whatever to do with the affair, and knew nothing about it until after it had occurred. Since the law provided that the penalty must be imposed when anyone of French descent was found murdered, the result was that the bodies were mutilated, and it became impossible to determine, from the dead body, whether it was that of a Frenchman, a Norman, a Saxon, or a native Englishman. So that law was amended and there was used the prima facie clause which we have in the pending measure, and it was provided that if any dead body was found it should be presumed to be that of a man of French descent. Before very long it was found that did not work, some of the books stating that an individual would simply

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PRO

by Prof. Charles H. Houston

Dean, Howard University Law School

★ *Prof. Houston argues that Federal action is necessary to curb lynching and that only specific anti-lynching legislation will guarantee Federal action.*

It has been my experience, and I think the experience of many people, that when Congress finds it has a moral responsibility for some grave question causing a public emergency, it usually finds ways and means within which at least to attempt a solution. I refer for illustration to three acts. There is the Mann Act, covering the white slave traffic, of June 25, 1910, when the question of morality, sexual morality, was thought to be a public emergency.

I refer again for illustration to the National Motor Vehicle Traffic Act of November 29, 1919, in which the interstate transportation of stolen cars was thought to create a public emergency.

I refer also for illustration to the Lindbergh law of June 22, 1932, when interstate kidnapping was thought to be a national emergency.

And not only on the question of legislation, but also on the question of law enforcement, we find that although there may be no express means available within which to strike directly at a particular emergency, yet even the law enforcement officers are able to find some ways and means to cope with an emergency when they really recognize and feel it. As an illustration of that I refer to the conviction of Al Capone. When they could not get him for murder and other crimes, they got him for a conviction for violation of an income tax.

So I say directly, that the failure of the Congress of the United States to pass an anti-lynching law is itself a reflection that the Congress has not felt a sufficient moral responsibility for the crime of lynching and its attendant evils and has not felt that lynching was a sufficient public emergency for Federal legislation.

Now, some have argued that there may be some question of the constitutionality of this Federal anti-lynching law. Abler lawyers than I have discussed and supported the constitutionality of the measure. The point that I am making is this, that the Congress in the last analysis under our constitutional system does not determine the constitutionality or unconstitutionality of legislation. By our system of government we have decided that that should be determined by the courts. And I call attention to the fact that where Congress has thought the public emergency to be sufficiently acute, Congress has gone ahead with legislation and left it up to the courts as to whether this legislation is or is not constitutional.

That leads me to two questions.

The first question is whether the Federal Government will act without specific anti-lynching legislation, and the second question is whether there is a Federal emergency. On the question whether the Federal Government will act without specific anti-lynching legislation, I should like to review just briefly, two or three cases.

In August 1933, we had the Tuscaloosa, Alabama, cases, where the boys were taken from the jail in Tuscaloosa by the sheriff up to Birmingham, ostensibly for safekeeping. They were intercepted by a mob just after they crossed the county line. A brief was presented to the Attorney General, asking for at least an investigation, and if the facts warranted it, a prosecution under the old Civil Rights Night Riders Act, which prohibited men going in disguise on the public highway in groups to prevent persons from the exercise and enjoyment of their civil rights. We maintained that the lynching of a man to prevent him from coming to trial was a violation of his civic rights. However, the Attorney General decided they had no jurisdiction to prosecute.

Later, in 1934, we had an amendment to the Lindbergh law. The original Lindbergh law was passed on June 22, 1932. And that was properly passed as an expression of public indignation against the crime of kidnapping. That law provided that where a person was held for ransom or reward and there was an interstate kidnapping, the Federal Government should have jurisdiction and it should be a Federal crime. However, the Attorney General and Congress did not feel that this law sufficiently met the public emergency. So an amendment was introduced in the last Congress to broaden the Federal crime by the introduction of the words "when a person is held for ransom or reward, or otherwise." It is significant to note that in the committee reports two things show up.

First, in the report from the House Committee on the judiciary by Mr. Sumners of Texas, chairman of the Committee, speaking for the committee, said that the committee of the House reported it favorably to the House with amendments, with the recommendation that the bill as amended pass. And he supported the introduction of the words "or otherwise" for the purpose of broadening the basis of Federal jurisdiction. When the matter came before the Senate Committee on the Judiciary the Committee asked the Attorney General for an opinion. The Attorney General said that, "This amendment adds the word 'otherwise' " so that the act as amended reads:

" 'Whoever shall knowingly transport any person who shall have been unlawfully seized and held for ransom or reward or otherwise shall upon conviction be punished' ", and then he said, "The object of the addition of the word 'otherwise' is to extend the jurisdiction of this act to persons who have been kidnapped and held, not only for reward", but here are the important words, "But for any other reason."

On October 4, 1934, near Darien, Ga., the house of one Curtis James was broken into. James was shot and abducted by the mob. It was presumed that he had been killed, but in spite of an intensive search made for his body it was not found.

On October 15 the National Association for the Advancement of Colored People wrote to the Department of Justice, asking whether the adbuctors of James could not be prosecuted under the Lindbergh Law. Now, it is to be remembered that Darien, Ga., is very near the

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disappear, and nobody could be found. So the law was repealed. One of the great writers on law says that since those primitive times—he uses that term—a more equitable system of imposing punishment has been adopted, and that an effort has been made to punish those who commit the crime rather than to punish the innocent.

In the pending bill we find that a fine is to be imposed upon a county, and if the county is unable to pay, those who claim to be injured can levy on the courthouse or jail—and the hospital, I assume. They probably would take them all. If there happened to be a county hospital, of course, it would be far more important to have the judgment paid than to operate a hospital for the benefit of the sick and the needy! It would be far more important to have the judgment paid than to keep the doors of the courthouse open! Everything sinks into insignificance in the minds of those who have brought before the Congress a bill which is the lineal descendent of those pernicious measures which cursed the very people they were intended to benefit after the War between the States. They were a curse alike to those against whom they were directed and those for whose alleged benefit they were passed.—*Extracts, see 9, p. 192.*

by Hon. Hatton W. Sumners

U. S. Representative, Texas, Democrat

★ *Mr. Sumners predicts that the passage of the bill will lessen the sense of responsibility of local officials and result in more lynchings.*

I BELIEVE that practically everybody in this country would like to see lynching suppressed. There is a very fundamental difference among people who have studied the matter as to how best to proceed.

Lynching is called an American institution. Of course, that is not exactly true, but we certainly have been addicted to the habit in this country. I am much inclined to believe that the numbers of lynchings which have taken place is due somewhat to the peculiarity of our representative form of government in this country and its growth as a government. It differs from what was the situation in most countries. In this country we saw population preceding government all the way from the eastern seaboard to the Pacific Ocean. In most other great migrations government has gone with the people, because it was necessary that they should move in considerable numbers and organized in order to drive out or conquer the inhabitants found there. In this country, due to the scarcity of inhabitants, their inferiority in arms, and so forth, that was not necessary. When those groups of people moving westward got far beyond established government, homemade governments sprung up. I do not believe that anybody who has ever written about our American system of government has given attention to that very interesting and at least temporarily important part of our governmental development. There were no sheriffs, no legislatures, but an effective sort of democracy sprung up in these communities. They protected life and property, at least in a way, and made those sections of the country, where there was no organized government, very safe sections in which to live.

During that period of development what are known as lynchings grew up as a sort of judgment executed by the people of the community. When I was prosecuting attorney in Texas a long time ago that government which I have just mentioned, and which was established in Texas before the government was established whose laws it was my duty to enforce, was giving way. In some respects it had not yet entirely disappeared though it is about gone. I know that a man of self-respect would have been ashamed to have litigated a matter of violence done to his person or to his family when I first went to Texas. There are some very interesting things about that government which might be told, but of course we cannot go into details. I merely mention that in passing to direct attention to that peculiar part of our governmental history which is associated in a definite sense with lynching in this country.

I think another reason for lynching in this country has been that when our ancestors came to this country many of them were fugitives from governmental oppression. We were so anxious to protect an individual against the crimes of government that we failed properly to protect the individual against the crimes of other individuals. The criminal has too great advantage under our procedure. With us lynchings in proportion to population is greater in the rural communities where the police power does not extend. In these communities the people afford for themselves practically all the police protection they have.

If the power of these home-made governments could have continued in the hands of the pioneers who were instinctively just and courageous, there would not have been so much trouble about it, perhaps. But they have given way, and the hoodlum has entered into the situation. That makes it doubly necessary that the people of America shall turn their faces against lynching.

I do not want to be understood as taking the position of defending lynching ever in this country, but I make a statement of facts. There is usually an explanation for everything, and I think that is in part an explanation for lynchings in this country.

I know that in my section of the country I have watched the changing sentiment as the pioneer has disappeared from control and police protection has improved. I remember the time when a man was taken out of the courthouse and mobbed. The judge raged in vain because nobody paid any attention. The people thought the man ought to have been mobbed. About 10 years ago a mob undertook to take a man out of jail in Dallas. The sheriff shot and, I believe, killed two or three people. It was sought to stir up public opinion against the sheriff, but the people stood by him. Public opinion was with him.

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Florida State line. On October 20 the Department replied:

"There is nothing to indicate that he was held, kidnapped, and transported in interstate commerce and was held for ransom, reward, or otherwise. In the absence of these facts establishing these elements it would seem that the matter would be one entirely for the authorities of the State of Georgia."

I call attention to the next fact, and that is that the Lindbergh Law creates a presumption where the person kidnapped has not been returned within 7 days that there has been an interstate transportation, but the Attorney General deliberately passed over that fact and stated the burden of proof was on the National Association to establish that there was an interstate kidnapping.

On October 26, 1934, Claude Neal was kidnapped from the jail in Brewton, Ala., transported by mob across the interstate line into Florida, and there lynched near Marianna, Fla. And the National Association felt, "Now, here we have a case absolutely made to order for the Department of Justice, in which you do not have to rely upon the presumption, in which the National Association can even meet the Department of Justice's contention and establish an interstate kidnapping." And since the Department of Justice in the Curtis James case took cognizance of the words "or otherwise" and said there was nothing to indicate that Curtis James had been kidnapped and held for ransom, reward, or otherwise, that here where the National Association could establish that Claude Neal had been kidnapped, taken across the State line, held for murder, with the public invited to the execution, that this was a case where the Attorney General had the letter of the law and the spirit as well on his side. But before the National Association could even get a letter to the Attorney General the Department of Justice had come out in print and stated that it had no jurisdiction. And in doing so, of course, it was obliged to repudiate its report to the Senate Judiciary Committee. It was likewise obliged to repudiate its letter of October 20, 1934, to the National Association in the Curtis James case.

I think this establishes beyond any question that the only way we are going to get Federal action is by specific anti-lynching legislation.

And now I want to go to the question as to whether there is a public emergency. As I see this process we have 12 million people being adjusted into the common life of 108 million other people. And when 12 million people are to be integrated into the common life of another 108 million as a minority, there is going to be some friction, of course, there are going to be some lives lost, and of course there is going to be some suffering. So that from the standpoint of the individual we are not making an argument.

But what do we find that lynching has represented? It has represented the direct means of terrorization, by which certain public consequences have been attempted to be achieved.

May I call attention to two things? The first one is this, that in the Claude Neal lynching the investigator finds that the lynching itself is merely a manifestation that "beneath the volcanic eruption lay the pressing problem of jobs and economic security. This lynching was merely a surface eruption. The lynching had two objects: first, to intimidate and threaten the white employers of Negro labor, and secondly, to scare and terrorize the Negroes so that they would leave the country and their jobs could be taken over by white men."

If what I have said is true, (and I do not want it thought that I am of the opinion that all the causes of lynchings are economic, but certainly one of the acute bases, one of the bases of lynching right now is economic), then we must look to the question as to whether there is the economic crisis in the South which is going to make and require a mass adjustment of the population.

The traditional economy of the South is based upon agriculture, cotton, Negroes, and mules, and because cotton has responded as one of the last crops to mechanize production it has been necessary for the South to have available an almost unlimited supply of cheap Negro labor, especially for cotton picking. Now, with the cotton-reduction program this cheap supply of labor has been thrown out of work. And right recently down in Arkansas there was a trial by the State of Arkansas of Ward Rogers. He was tried on account of his activities in connection with the unionization of share-croppers. An investigator sent down by the Agricultural Adjustment Administration to the northeast counties of Arkansas, stated that conditions were as bad there as they were in war-torn Belgium, with cabins open to the winter winds, and wholesale evictions in places, and families with all their belongings out on the roads, with absolutely no place to turn. Now, if that is the condition which is produced by the cotton-reduction program, if it means an uprooting of this large section of the population, you are then facing a public emergency which, unless it is going to be regulated, unless it is going to be solved by lawful processes, is going to be attempted to be adjusted by lynchings and other forms of sporadic outbreaks.

If social adjustments down South, if economic adjustments down South in spite of the feeling of the decent southern people, if the policy and the instrument for solving these adjustments is lynching, and if Congress feels that lynching is a crime, and if it feels that lynching leads to anarchy, such as occurred at Shelbyville, Tenn., when the mob burned the court house, then I say that we have a public emergency such as this country has never been faced with.

The evictions in Arkansas were caused by two things: (1) The cotton-reduction program, and (2) the ever-increasing unionization of share-croppers to demand from the planters their share in the benefits under the A.A.A. program. Now, you have the ever-increasing unionization of the share-croppers, and the laborers, organizing against the planters. That is bound to bring on this very sort of tragedy, unless both sides know in advance that lynching is going to be dealt with, not simply by the States, as the States do nothing, but by the Federal Government.—*Extracts, see 5, p. 192.*

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Sumners, *Cont'd*

I have been very much interested to observe in Congressional Committee hearings testimony, particularly with reference to the change in the attitude and the sentiment of the people of the South against lynching. A good deal of weight seems to have been given to that testimony. I can testify to that change and I do not want anything done to interrupt its development. That is why I am opposing this bill.

We come, then, to the practical proposition. We have had some experience in what results when we turn responsibility over to the Federal Government. Coordinate responsibility between the Federal Government and the States does not seem to work. It is my deliberate judgment, coming from a section of the country where this crime has been all too prevalent, that nothing could deter the growth of sentiment in the Southern States, of the sense of local responsibility more than to have Uncle Sam, the Federal Government, enact such a law as this. What would such a law as this do?

First, among the people who feel it their responsibility and who have been arousing sentiment in that section of the country, if we are to judge by our past experience, such as came with the eighteenth amendment, the tendency would be for them to cease to feel the exclusive and sole responsibility. They will take the attitude of, "Oh, let Uncle Sam do it." That is my judgment.

Then, to have a Federal marshal go into a community and undertake to make effective the provisions of such a bill as this, I believe would bestir a resentment which would reflect itself in the jury box when you finally had to come to try those people before a jury in any of the communities in that section of the country. There cannot be any doubt about it, in my opinion. That is my frank and candid judgment.

We have a Government, a part of the powers of which are lodged in the States and a part of the powers of which are lodged in the Federal organization. In the beginning it was recognized that there are some things which the States can do better than the Federal organization. Included within those things was the exercise of the police power of government, the protection of the citizens of the country. The plan has made the public officials in the final analysis answerable to the people of the States. It seems not to have been contemplated in the scheme, even as modified by the fourteenth amendment, that we had established a Federal guardianship over the States and subjected State officers and citizens of the States to correction and punishment by those of us who happen to sit in Congress or those of us who happen to sit in appointive places on the Federal bench.

I believe that is the fundamental notion that has guided the courts in the decisions.

I go further. Even if that were not true insofar as the scheme of constitutional arrangement is concerned, in the long run it would prove to be the best sort of government. I believe, as fully as I believe anything in the world, that in the very nature of things, mob violence being a thing that springs up almost instantly in a community, there can be no safe protection in the long run to the person in danger other than the people of the community where the situation develops. It will be found from statistics that under the responsibility of the States there has been a rather rapid diminution of lynchings in America.

Furthermore, in that connection, if I may make this brief observation, whenever legislators who are interested in bringing about a given result discover that progress is being made by the people under the sense of local responsibility, particularly in view of some of the experiences we have had in the shifting from State to Federal Government of responsibility, they do not do a serviceable thing to those whom they would protect when they do that sort of thing which is proposel by this bill.

I speak in all sincerity and I speak as a man from the South when I say that I know in my time there has been a tremendous development of sentiment in the South among the people there against lynching. They feel it is their job to stop this thing that has been a disgrace to that section of the country. I believe every State is making very substantial progress in this respect. We have had this flare-up recently. There have been a lot of pretty bad crimes committed. The people are disposed to take direct action, and I am not sure that the spirit of the people is not a bit rebellious right this minute.

I say to the friends of the legislation that they do a serious thing when they do anything that would tend to lessen the sense of absolute responsibility among the people of the communities or the States who, in the very nature of things, are the only dependable defenders of the person who is in danger of violence at the hands of a mob. The Federal marshal is too far away and the Federal court is too far away. The thing would happen before ever they got into the picture. If this Federal intervention takes place this sense of local responsibility would be reduced with a nonsustaining, nonconsenting attitude of public opinion. This coercive legislation by the Federal Government, even if held constitutional, I am sure would operate very directly against the interests of those whom its sponsors seek to protect.—*Extracts, see 6, p. 192.*

▼

by Hon. John H. Bankhead

U. S. Senator, Alabama, Democrat

★ *Senator Bankhead voices opposition to placing the Federal Government in control of local police laws.*

SUPPORTERS of the Costigan-Wagner bill talk about lynching as "a national menace"! It is absurd. Any lynching, of course, is unfortunate.

In my own home county, in Alabama, in the period of more than 125 years since it was organized there has occurred only one lynching; and the man lynched was not

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PRO

by Walter White

Secretary, National Association for Advancement of Colored People

★ *Mr. White predicts there will be no cessation of lynchings until Federal legislation is enacted.*

THERE are three sources of opposition to the Costigan-Wagner bill. One of them, of course, is the opposition of the lynchers themselves, who do not want this American folkway interfered with. They want to continue lynching with impunity and without fear of any punishment. This is a part of not only the question of law enforcement, but the whole economic and political situation.

In many of the states, where most of the lynchings take place, Negro citizens are disfranchised in flagrant violation of the Federal Constitution. As a result, the law-enforcement officials in those states, and those charged with the duties of preventing lynchings and seeing the law is upheld, feel they have no responsibility to Negro citizens, who are voteless in most of these states, and prefer to yield to the pressure and to the threats of the mobs themselves.

Then there are those, some of whom are sincere, I believe, who feel that no adequate legislation can be passed by the Congress which would be constitutional, but we feel that a great many of those persons who bring up the constitutional issue, are primarily concerned with masking motives for opposition to this legislation, which are considerably less worthy than honest concern of danger in the constitutionality of the anti-lynching bill.

And, finally, there are thore who are the other extreme of the political thought, some of whom are objecting to this bill because they claim it would be used against labor in industrial disputes. I wish that those persons who oppose the bill's passage would take the trouble to read the bill, because they will see it applies only to instances where persons are injured, or killed, when those persons are taken from the custody of the peace officers, or are suspected, or are charged with or convicted of the commission of a crime, which would clearly exclude it from being used in industrial disputes.

Finally, I do believe it is evident beyond any question, if you only look at the record of lynchings, the 15 which occurred since the Seventy-third Congress adjourned, having failed to take action on the Costigan-Wagner bill, is absolute proof of the fact that there will be no cessation of lynchings until Congress enacts such legislation as this.

Some people say lynching is a cause, and some say it is an effect. It is my conviction it is both. It is the effect of malodorousness of economical, political, and social conditions. But it is also a cause. It keeps alive, perpetuates, and extends racial hatred and racial bitterness, which prevents a solemn and intelligent and sober thought in dealing with the problems which are common to all citizens of the United States, white and all alike.—*Extracts, see 5, p. 192.*

CON

Bankhead, *Cont'd*

a negro, but a white man. In many counties in my State there has never been a lynching in their whole history; and still we hear theoretical doctors of race relations tell the Senate and tell the world through the Congressional Record and the news services, "Oh, we have a situation that is so horrible, so menacing, so distressing that we must strain the Constitution of the United States"—and they are bound to know they are straining it—"and extend it into fields it has never before sought to cover in order to deal with a terrible, disgraceful, menacing condition of lynching and mobbing."

I say there ought to be potent supporting facts of overwhelming force and convincing power to show that there is a menace to our institutions, to a group of our people, before we undertake to confer local police power upon the Federal courts of the country.

The Senator from Colorado seems to think that if participants in lynchings can be dragged into the Federal courts they will be punished. Why take them to the Federal courts? We have local men presiding over the Federal courts in our section. We have the same type of citizens serving upon the grand juries in the Federal courts that serve upon the grand juries in the local courts. We have the same type of trial jurors in the Federal courts that we have in our local courts. The Senator from Colorado, however, seems to have the idea that there is such a dread of a Federal judge, of a Federal court, constituted of our local people, that if Uncle Sam's name is put on it that is going to alarm and frighten everybody out of doing things that otherwise might be done.

So far as the actual effects of trials is concerned, I should have no serious objection to a Federal court trial; but I do denounce any effort to break down our dual system of government, our local courts. I do denounce any program to jerk citizens up and haul them away two or three or four hundred miles to the seat of some Federal court, as must be done in many States of the Union, with their broad areas, under the program sponsored here by the Senator from Colorado; and I do object, to any program which seeks to place the Federal Government directly in control of the enforcement of the police laws within our States.—*Extracts, see 5, p. 192.*

SOURCES OF MATERIAL IN THIS ISSUE

1—(Chadbourn) "Lynching and the Law," University of North Carolina Press, Chapel Hill, 1933.
2—(Walter) American Political Science Review, June, 1934.
3—(Costigan, Capper) Congressional Record, April 24, 1935.
4—(Wagner, Connally) Congressional Record, April 25, 1935.
5—(Houston, Mencken, White) Hearings, Sub-Committee, Senate Committee on the Judiciary, February 14, 1935.
6—(Sumners) Hearings, Sub-Committee, Senate Committee of the Judiciary, March 16, 1935.
7—(Borah) Congressional Record, May 1, 1935.
8—(Senate Committee on the Judiciary, also Tuttle) Senate Report No. 340, 74th Congress, 1st Session, March 18, 1935.
9—(Byrnes, Tydings) Congressional Record, April 29, 1935.
10—(Bankhead) Congressional Record, April 30, 1935.

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